

**Housing and Property Chamber**  
**First-tier Tribunal for Scotland**

---



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”)**

**Chamber Ref: FTS/HPC/CV/18/3291**

**Re: 49 Cullen Drive Tanshall, Glenrothes, KY6 2JJ (“the Property”)**

**Parties:**

**Mr Paul Hutchison and Mrs Helen Marie Hutchison, c/o Robert F MacDonald Solicitors, 11 Wemyssfield, Kirkcaldy, KY1 1XN (“the Applicants”)**

**Mr Colin Stuart Brotherston, 49 Cullen Drive Tanshall, Glenrothes, KY6 2JJ (“the Respondent”)**

**Tribunal Member:**

**Pamela Woodman (Legal Member)**

**Present:**

The case management discussion in relation to case reference FTS/HPC/CV/18/3291 took place at 10.00am on Friday 29 March 2019 at Fife Voluntary Action, 16 East Fergus Place, Kirkcaldy, KY1 1XT (“the CMD”). The Applicants were not present at the CMD but were represented by Susan Hill (“Ms Hill”) of Robert F MacDonald Solicitors (“Applicants’ Representatives”). The Respondent was not present, nor was he represented, at the CMD. The clerk to the Tribunal was Vicki Hammill.

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:**

**BACKGROUND**

1. An application was made to the Tribunal under section 16 of the Housing (Scotland) Act 2014 (“2014 Act”) for civil proceedings in relation to matters associated with a tenancy under the Housing (Scotland) Act 1988 (“1988 Act”). The application was made in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“HPC Rules”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property

Chamber (Procedure) Regulations 2017, as amended, ("**2017 Regulations**"). More specifically, the application was made in terms of rule 70 (*Application for civil proceedings in relation to an assured tenancy under the 1988 Act*) of the HPC Rules.

2. However, as part of the application paperwork, the Tribunal had been provided with a copy of a tenancy agreement in respect of the Property ("**Tenancy Agreement**") between the Applicants and the Respondent dated 16 May 2018 (on the front cover) but signed on behalf of the Applicants on 26 April 2018 and unsigned by the Respondent, albeit that it appeared that the Respondent had initialled each page. The Tenancy Agreement purported to be a short assured tenancy but the commencement date was 16 May 2018 and so, in light of section 12(1A) of the 1988 Act, the tenancy constituted by the Tenancy Agreement could not be an assured tenancy. In this case, it was rather a private residential tenancy and subject to the terms of the 2016 Act. An application in terms of rule 70 of the HPC Rules was not appropriate in the case of a private residential tenancy.
3. Accordingly, Ms Hill sought to amend the rule number under which the application was made from rule 70 to rule 111 of the HPC Rules. Given that the terms of the two rules are in the same terms, save only as to the legislation in terms of which the Tribunal obtained jurisdiction and so the types of tenancy to which they relate, the Legal Member was satisfied that there was no prejudice to the Respondent in allowing such an amendment. The Legal Member allowed the application to proceed in terms of rule 111 (*Application for civil proceedings in relation to a private residential tenancy*) of the HPC Rules.
4. A notice of acceptance of the application was issued by the Tribunal dated 12 February 2019 under rule 9 of the HPC Rules ("**Notice of Acceptance**"), which confirmed that the application paperwork had been received by the Tribunal between 10 December 2018 and 17 December 2018. However, the application paperwork pertinent to the case with reference FTS/HPC/CV/18/3291 was all received on 10 December 2018.
5. The Applicants' Representatives and the Respondent were each respectively sent a letter by the Tribunal dated 7 March 2019 confirming that the application had been received, intimating the date, time and place of the CMD and noting that written representations from the Respondent must be received by 25 March 2019. The Respondent did not provide any written representations to the Tribunal in advance of the CMD. He did not advise the Tribunal that he would not be present or represented at the CMD.
6. The Legal Member was provided with a certificate of intimation from Steven Cameron, sheriff officer of Stirling Park, stating that the letter dated 7 March 2019 from the Tribunal to the Respondent was served on the Respondent on 11 March 2019 by depositing it through the letterbox at the Property. The Legal Member was satisfied, on the balance of probabilities, that the Respondent had been given notice of the CMD as required in terms of rule 24 of the HPC Rules and that the CMD could proceed to be heard in the absence of the Respondent in terms of rule 29 of the HPC Rules.

7. This decision arises out of the CMD.

## **PROCEEDINGS**

8. Ms Hill confirmed that she was not aware of there having been any communication from the Respondent in relation to the CMD.
9. Ms Hill confirmed that, as far as she was aware, the Respondent was still in occupation of the Property. She confirmed that the Applicants' Representatives were still instructed in relation to seeking the eviction of the Respondent which would be the subject of a separate application.
10. Ms Hill did not have a fully signed copy of the Tenancy Agreement. However, the form AT5 provided as part of the application paperwork was signed and each page of the Tenancy Agreement appeared to have been initialled by the Respondent. By comparing the signature and the initials, the Legal Member was satisfied, on the balance of probabilities, that the Respondent's handwritten initials were on each page of the Tenancy Agreement.
11. Ms Hill requested to introduce an updated rent payments schedule in respect of the period from 16 November 2015 to 7 March 2019 ("**Updated Rent Payments Schedule**"). She noted that it showed a lower sum outstanding (namely £2,444.66) than the sum originally sought (namely £2,575) as referred to in the application form and the original rent payments schedule in respect of the period from 18 April 2018 to 16 November 2018 ("**Original Rent Payments Schedule**"). The Legal Member noted that, in both of the rent payments schedules, there was a nil balance as at 18 June 2018 but that there were stated arrears continually from 16 July 2018 onwards. In addition, the Legal Member noted that the Updated Rent Payments Schedule did not include any entries entitled "Invoice to Tenant" for £25 each which had been included in the Original Rent Payments Schedule. The Updated Rent Payments Schedule referred only to amounts due and paid in respect of rent. For these reasons, the Legal Member allowed the Updated Rent Payments Schedule to be submitted and accepted by the Tribunal. The Legal Member received a copy from Ms Hill.
12. The Tenancy Agreement provided that the Respondent was obliged to pay a deposit of £495 on or before the date of entry. Ms Hill was not able to provide any information about the tenancy deposit.

## **FINDINGS IN FACT AND REASONS FOR DECISION**

13. The Legal Member noted that the Applicants were the registered proprietors of the Property. It was registered under title number FFE89984.
14. In terms of the Tenancy Agreement, the Respondent was obliged to pay rent at the rate of £495 per calendar month in advance on or before the date of entry (namely 16 May 2018) and on or before the same date of each calendar month thereafter.
15. In the absence of any written representations or attendance at the CMD by the Respondent, the Legal Member had no information to suggest that the arrears of rent detailed in the Original Rent Payments Schedule or the Updated Rent

Payments Schedule were not due and payable. The Legal Member was satisfied, on the balance of probabilities, that the Respondent was in arrears of rent in the amount of £2,444.66.

## **DECISION**

16. The Tribunal decided that an order be granted in favour of the Applicants against the Respondent for payment of the sum of £2,444.66 (two thousand four hundred and forty four pounds and sixty six pence) sterling.
17. The order referred to in the preceding paragraph was intimated orally to Ms Hill during the CMD.

## **Right of Appeal**

**In terms of Section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

P Woodman

29 March 2019

---

**Legal Member**

---

**Date**