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 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/18/2636

Re: Property at Munya Kia, Broomhillock, Whitecairns, Aberdeenshire, AB23 8XQ ("the Property")

Parties:

Mr Edwin Thomson, Noah, Newton of Ardo, Whitecairns, Balmedie, Aberdeenshire, AB23 8XH ("the Applicant")

Mr Clive Mansfield, Mrs Hilda Margaret Mansfield, Kingston, Newburgh, Aberdeenshire, AB41 6AL ("the Respondent")

Tribunal Members:

Petra Hennig-McFatridge (Legal Member) and Linda Robertson (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Applicant was entitled to payment by the Respondents of a sum of £1,695

Background:

On 2 October 2018 the Applicant raised proceedings with the Tribunal for payment of rent arrears for the property. The amount claimed was £2,670 consisting of 4 times £95 for the months of April, May, June and August 2018, 2x£895 for the months of July and September 2018 and a payment of £500 pro rata for the period from 1-17 October 2018. The application was accompanied by TSB bank statements of the Applicant from 21 March 2018 to 1 October 2018 and a copy of a Short Assured Tenancy Agreement for the property between the Applicant and the Respondents.
On 4 December 2018 the Tribunal received representations from the Respondents dated 29 November 2018 and accompanied by copy text messages between the Applicant and the Respondents

[redacted]

A case management discussion (CMD) took place on 11 December 2018. At that CMD it became apparent that the representations of the Respondents had not reached the Applicant. Accordingly the matter was adjourned to 22 January 2019 to allow the Applicant time to consider the representations. The Applicant was directed to lodge further representations and the Respondents stated they may wish to lodge video evidence. They were advised this should be on memory sticks so it could be processed by the Tribunal and made available to the other side. The matters to be determined were stated as:

1. Whether it was agreed between the parties that a reduced rent of £800 would be paid for period April 2018 to August 2018
2. Whether the Respondents were entitled to withhold the sum of two months rent due to the Applicant's failure to disclose the operation of a garage adjoining the Property
3. The date of termination of the tenancy.

The Notes on a Case Management Discussion dated of 11 December 2018 are referred to for their terms and held to be incorporated herein brevitatis causa.
On 9 January 2019 the Respondents tried to lodge DVD evidence which was rejected as not in a format that could be accepted by the Tribunal and returned. This evidence was not produced again.

On 22 January 2019 a hearing took place at which the Applicant was not able to attend due to illness. The matter was postponed without opposition and the Applicant at this stage ordered to lodge a copy of the signed Tenancy Agreement and of the Notice to Quit.
The Document headed decision with statement of reasons dated of 22 January 2019 is referred to for its terms and held to be incorporated herein brevitatis causa.

On 27 February 2019 the Applicant lodged a copy of the Notice to Quit dated 5 September 2018 with recorded delivery proof of posting.

A hearing took place on 14 March 2019 at which it became apparent that the Applicant had thought the Tribunal had received a further bundle of documents sent by him on 28 December 2018 by email together with further representations. Investigations disclosed that whilst the Applicant could prove he had sent these to the correct email address and not received a "bounce" notification, the email had been too large to be processed by the IT system and thus rejected and not received by the case worker. Paper copies of said documents were lodged and the matter adjourned to a further hearing on 30 April 2019 at 10 am to allow the Respondents to reply to the representations.
The documents Notes on a Hearing dated 14 March 2019 is referred to for its terms and held to be incorporated herein brevitatis causa.

The Hearing:
At the hearing on 30 April 2019 the Appellant attended with Ms Gordon as supporter and the Respondents attended with their daughter as their supporter.
At the hearing it then became apparent that once more representations in writing lodged by the Respondents had not been received by the Applicant and the Tribunal members. The Respondents could show by proof of posting certificate that they had sent further representations to the Tribunal on 22 April 2019, which for a reason not

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known to the panel had not been disseminated by the case worker and were not logged as received by the Tribunal administration. These consisted of written representations, a cover letter dated 15 April 2019 and 5 photographs. These were then copied to the Applicant and the panel and the hearing proceeded and was concluded.

As the legal member dealing with the last two callings of the case I have made a formal complaint to the Tribunal regarding the matter of representations and documents not having been received by parties prior to the case calling. I understand that this is being investigated at a higher level and parties will be advised of the outcome in due course.

The documents lodged including text message exchanges and written representations as well as the tenancy and notice to quit documentation are referred to for their terms and held to be incorporated herein. This includes in particular the note of evidence given by both parties at the first day of the hearing on 14 March 2019.

At the hearing on 30 April 2019 it was agreed between the parties that the Applicant has given notice to the occupier of the shed, which had given rise to the Respondent's complaint. The Applicant gave evidence that by the end of August 2018 he had changed the locks on the garage premises. When the Respondents stated in evidence that they had seen the neighbour in question using a key when he was with the Applicant at the shed after that date and that they had seen the neighbour enter the shed without the Applicant on 21 September 2018 the Applicant stated that the time he attended with the neighbour was to allow the neighbour access to remove items after he had changed the locks and that on the occasion of 21 September 2018 the neighbour had in fact broken into the shed.

The Respondents were asked why they had continued to withhold rent after the change of locks had taken place and both stated this was because there were still items of the neighbour in the shed, which could be seen on one of the photographs, and they could thus not be sure the shed would not be used as a garage again in future. They state they considered the garage was not fully vacated as per what they considered had been agreed and thus stated in a text on 4 September 2018 "We would like to withhold rent for a trial period to see how things go".

It is not disputed that rent had not been paid for the months of July 2018 and September 2018, that the Respondents moved out of the property at the end of September 2018. The Respondents were asked by the panel members why they had not paid rent for 2 months and why they thought they were entitled to do so and stated that they had withheld rent without having taken any legal advice because they wanted the Applicant to deal with the noise emanating from the garage, which was run from the metal shed located on the other side of the driveway and as they have now moved out it is not relevant that he may have done so later. They consider that the presence of items of the neighbour in the shed meant the matter was not resolved and as they have now moved out any remedy would be too late. They are not prepared to pay the retained rent. They stated that they did not wish the garage to be closed but just to be operating within reasonable hours and not late at night. Both parties had provided representations about other repair issues which had been

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discussed and resolved at an earlier stage in the tenancy but it is clear that these had no impact on the issues of rental payments for the period in question. They were raised by the Applicant to show that previous issues raised did not include the matter of the garage operation up to April 2018.

It is agreed that a meeting had taken place on 18 April 2018 at which a reduction of rent by £95 for the property had been discussed by the parties. The Respondents state this was agreed until the matter was resolved and not limited to a period of two months. They refer to the text messages of the Applicant to them on 14 July 2018 which states "well it has to be paid and will return to £895 as of 1st September....". The Applicant stated in evidence that he only agreed to a reduction for a period of two months to see how it would go and that he made a mistake in the said email. When asked by panel how the Applicant explained the text message of 14 July 2018 referring to the rent going back to £895 per month on 1 September 2018 the Applicant stated that this was a mistake but if it meant dropping that part of the claim that would be "ok".

The Respondents confirmed that they had taken some legal advice since the first date of the hearing and now thought they could have resisted the Notice to Quit but this had not been known to them at the time they moved out. The felt after they had received the Notice to Quit that they had no option but to move and did so at great expense. The Respondents stated in evidence that the property has been advertised for holiday let since September 2018 and that they felt lied to by the Applicant, who they understood had given notice as he wished to move into the property himself. The Applicant did not dispute that the property was advertised as a holiday let and stated in evidence that he had given notice on the basis that he wished to move into his property but his plans had since changed and that the Respondents had stopped paying rent. The Applicant conceded that the Notice to Quit may not have been valid as not given to an ish date, which was another matter raised at the hearing by the Respondents. He had understood from information he read that he had to give 40 days notice in a certain format and had done so.

The Respondents took issue with the proceedings raised on the basis that the Applicant had not sent them an invoice with the Notice to Quit or thereafter and had not asked for payment of the rent until he raised proceedings. They deny having received a text to that effect on 30 September 2018.

Findings in Fact:

The parties entered into a Short Assured Tenancy for the property on 1 December 2016 for 6 months.
The monthly rent is £895 (Clause 6) payable "on or before the First of each and every month" (Clause 7).
If not terminated and the tenant remains in possession of the property after the expiry a new lease is created on the same terms and "terminable upon the Landlord giving the Tenant the notice required under the Act"(Clause 5)
After the tenancy started the metal shed on the other side of the driveway outside the property at some point started to be used as a garage by the neighbour.
The Respondents complained to the Applicant about what they considered the illegal operation of a garage next door at the end of March 2018.

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On 5 April 2018 a meeting was arranged for 18 April 2018 with the Respondents and the Applicant regarding the matter.
On 13 April 2018 the Respondents asked the Applicant to consider a reduction of rent as "we had no idea that we were living next door to a garage with all the noise and fumes that go with it."
The Applicant agreed to an abatement of rent of £95 in recognition of the matter until this was resolved.
The Applicant spoke to the neighbour following the meeting and advising the neighbour to stop working on cars after 7 pm.
The Applicant received a noise complaint regarding the next door property on 15 May 2018 and attended quickly but found no noise emanating from the shed.
After that date no further complaints were received from the Respondents by the Applicant.
No rental payment was made on 1 June 2018 for the month of June 2018.
The Applicant asked the Respondents for payment of rent on 26 June 2018. (text 26.6.18)
He gave notice to the tenant of the shed in July 2018.
He advised the Respondents the shed would be vacated by the end of August (text 26.6.18)
The Respondents asked for a rent reduction of £1000 in their text of 26.6.18.
The Applicant advised the Respondents he would issue a Notice to Quit as he was planning to move into the property himself.
The Respondents offered to pay the withheld rent if he withdrew that notice (text 14 July 2018)
The notice was withdrawn on 14 July 2018.
The Respondents were advised on 14 July 2018 to let the Applicant know if there were any further problems with the property.
A payment of £800 labelled June rent was made by the Respondents on 14.7.2018
On 16 July 2018 the Respondents texted the Applicant stating that a further incident with the garage being open until 11 pm had occurred and they would pay the August rent but withhold the July rent until the garage "ceases to operate and is fully vacated. When that happens we will pay you the withheld rent immediately".
A further payment of £800 labelled August rent was made by the Respondents on 14.8.2018.
On 4 September 2018 the Applicant advised the Respondents by text "He has no access to the shed and will not be working from it again".
The Respondents replied "As the shed is full of Stuarts property and not fully vacated we would like to withold the rent for a trial period to see how things progress".
On 4 September 2018 the Applicant texted "You know what, I'm just going to issue you a notice to leave, I've had enough."
No further payments were made since then.
No rent payment has been made for July and September 2018.
A written Notice to Quit containing the appropriate information in terms of The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988, dated 5 September 2018 for a date of 17 October 2018 was issued to the Respondents by the Applicant and signed for recorded delivery.
On 29 September 2018 the Respondents texted the Applicant "Keys to house are in garage in white cupboard above chest freezer"

On 30 September 2018 the Applicant texted the Respondents that the back door key was missing and "there is rent due for 2 months and up to the 17th, if this outstanding amount is not settled I will have to start legal proceedings to recover it. This text was sent to the correct number of the Respondents.

Reasons for Decision

Neither party in these proceedings made any attempt to jurisprudentially analyse the position regarding the various payment claims and the end date of the tenancy agreement. On the latter matter both parties in their representations left the matter of whether or not the rent for 17 days in October 2018 would be due to the Tribunal and made no specific legal submissions in the matter. The Respondents, in particular Mrs Mansfield, were clearly of the view that because the Applicant had not moved into the premises and the shed had not been fully cleared by the time they moved out this would give them the right to not pay rent for two months despite occupying the premises until 30 September 2018. They were not able to explain on what basis they considered they had the right to insist that the shed in a neighbouring property had to be fully vacated before they would pay rent or on what basis they would be entitled to withhold rent in the first place. Neither party had sought any legal advice during the tenancy period. The Respondents had simply moved out without questioning or resisting the Notice to Quit.

The Tribunal had considered the matters stated as the matters to be determined on the basis of all written representations and the oral evidence given by both parties at the two hearings.

The Tribunal considered that the issues to be decided in terms of the claim were 3 separate amounts. 1. The issue of the £95 reduction and for which months this should apply. 2. The rent for July 2018 and September 2018. 3. The pro rata amount up to 17th October 2018.

1. The issue of the £95 reduction and for which months this should apply.

With regard to the reduction in rent from £895 to £800 per month after the meeting on 18 April 2018 the Tribunal found that the agreement had been for a reduction from April onwards until the issue of the garage operation next door was addressed. The Tribunal considered this because, although the Applicant stated this was a mistake, the Applicant's texts clearly indicate that a reduction of rent had been agreed at the meeting and that the full amount would be asked for again from 1 September 2018. This also seemed likely and logical to the Tribunal as the Applicant had also stated to the Respondents that as of the end of August the shed would be vacated (text 26.6.18) and "He has no access to the shed and will not be working from it again" (text 4.9.18), which is congruent with the Applicant's evidence that he had given notice to the neighbour in July and that he had changed the locks to the shed at the end of August 2018. We believed the Applicant that the later entry of the neighbour into the premises was a break in and not authorised by the Applicant. Given the times stated above it seems logical that once the Applicant considered he had arranged matters so that the garage operation would cease through the changing of the locks at the end of August the period for which he had agreed to reduce the rent would then end. There was no indication other than the Respondent's rather vague recollection of the exact wording used at the meeting that

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the agreement would have been limited to 2 months. Clear written evidence was available indicating that the end of the reduction period was stated by the Applicant as 1 September 2018. The Tribunal thus find that the Applicant is not entitled to recover additional payments of £95 for the months of April, May, June, July and August but that the rent due for the month of September 2018 then again was £895. as the mutual agreement for a rent reduction ended on 1 September 2018. The Tribunal notes that the Applicant at no point conceded that there had been any breach of contract on his part but that clearly he had recognised that there was a problem between the Respondents and the neighbour and he had agreed to the reduction in light of this.

2. The rent for July 2018 and September 2018

The Tribunal noted that, quite apart from the question of whether or not the Respondents had any right at any stage during the tenancy to withhold rent, the texts of the Respondents to the Applicant stated "we are more than happy to pay rent on the understanding that you withdraw the notice to leave the property that you spoke about on Wednesday" in the text of 14 July 2018 and "However, we will withhold this month's rent until the garage ceases to operate and is fully vacated. When that happens we will pay you the withheld rent immediately" on 16 July 2018. On both occasions the reference was clearly to a withholding of the rent for July 2018 and on the second occasion there was a clear acknowledgement that the rent was withheld until a specific action took place and that the rent ultimately needed to be paid rather than that it was not due. because of any significant breach of the contractual obligations of the landlord. The Respondents have now moved out and the neighbour also.
The Tribunal had carefully considered the matter of retention of rent. It has in particular considered the case Pacitti v Manganiello, 1995 S.C.L.R. 557 (1995) which dealt with the matter in detail. In that case the landlord had inadvertently cut off the water supply to the leased premises. Because of this the defender withheld payment of rent for the period until he vacated the premises at the end of a 3 year lease. The defender argued that as the defect was not resolved by the end of the tenancy there was no obligation to pay. The matter went to appeal to the Sheriff Principal. The issues considered were the basis on which retention of rent could take place and the consequence of the defender having moved out on the matter of the rent claim. The case refers to the statement of Lord Anderson in the case Fingland and Mitchell v Howie, 1926 S.C. 319 that "*retention of rent seems to me to be warranted for one of two purposes (1) to act as a compulsitor on the lessor in obtaining performance by him of his contractual obligations, such as to make the house habitable; or (2) to satisfy pro tanto any counterclaim which the tenant is maintaining.*" The Sheriff Principal considered that the first purpose "*can only apply where the landlord is under a contractual obligation to the tenant and where , ex hypothesi, the tenant has a continuing interest in trying to persuade his landlord to fulfil his contractual obligation. Plainly, that is no longer the case after a lease has come to an end; and it may well have been in contemplation of that situation that Lord Anderson said that the tenant 'cannot retain rent indefinitely*'. The Sheriff Principal further stated in the case in question about allowing perpetual retention of rent after the end of a tenancy as argued by the defender's solicitor "*it would mean that a tenant would have an absolute right not to pay retained rent after the expiry of a lease if the landlord's breach remained unresolved at the date of expiry, but would be obliged to pay,*

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subject only to any reduction which might flow from a claim for damages against the landlord, if the breach was put right on the day before expiry. He was also obliged to state that the absolute and perpetual right of retention for which he contended would arise regardless of the possibility that the value of any damage suffered by the tenant might be minimal when compared with the value of the unpaid rent. I cannot imagine that our law of mutuality of contractual obligations has such effects and I am satisfied that a proper analysis of existing authorities does not lead to that result." As the defender had not formulated a claim for damages in the case "*In the absence of any such claim the defender can have no continuing right to retain the unpaid rent..*"

In Retention and Abatement of Rent, Leases (SULI) 1st Edition at 17-55 it is explicitly recognised that retention of rent and abatement of rent are two separate and distinct issues and that "*The right of the tenant to an abatement of rent does not depend on the landlord being in breach of an obligation under the lease. An abatement of rent can be the result of a voluntary agreement to vary the lease between the landlord and tenant and indeed that is how Rankine deals with the topic.*"

The Tribunal, based on the evidence provided by the parties, was not satisfied that the Respondents had a right to withhold rent in the circumstances in the first place or that the agreement to a reduction in rent was an admission by the Applicant that he had breached the contract.

The matter (2) of the issues stated in the Case Management Discussion Note of 11 December 2018, namely "Whether the Respondents were entitled to withhold the sum of two months rent due to the Applicant's failure to disclose the operation of the garage adjoining the Property." clearly has to be answered in the negative.

It was agreed that whatever problems arose regarding the neighbouring property, these arose only after the Respondents moved in. Mr Mansfield at the hearing on 14 March 2018 had explicitly stated that the garage only started to operate after the tenancy had started. Clearly it could then not have been disclosed prior to the operation actually starting and thus prior to the tenancy starting. The Tribunal, having analysed the text messages supplied, can find no indication of any complaints prior to the end of March 2018, which is more than a year after the tenancy had started. Whilst the Respondents stated repeatedly that the garage operated 24/7, at different times they referred to incidents of a car arriving at 11 pm or noise from the shed after 7 pm the Tribunal considered it was highly unlikely that such an operation would have been tolerated for almost a year without raising the matter and did not find it likely that the operation of the garage was to the extent of 24/7. A noise complaint on 15 May 2018 was immediately attended by the Applicant and no noise was confirmed. There was nothing in the evidence led that allowed the Tribunal to make a finding that the operation of a garage made the tenancy unfit for human habitation or had a significant impact on use of the property by the Respondents to the extent that this would have reduced the rent due to nil for any period during the tenancy. Clearly the Respondents had lived there without mentioning any problems for over a year. The Applicant had advised them to report the garage if they considered there was anything illegal going on and they had not done so as they wanted "no hassle". However, even if the Tribunal was satisfied that there was some negative impact from the garage operation on the Respondents, this appeared to have been dealt with by mutual agreement of a reduction of rent in April 2018, which was what the Respondents had asked for in their text of 13 April 2018.

After that date the Applicant took various steps to ensure that the problem was resolved. He spoke to the neighbour advising that any activity should stop after 7 pm

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and ultimately in July 2018 issued the neighbour with a notice to quit. He changed the locks to the property at the end of August 2018. Whilst some of the neighbours belongings were left in the shed after that date, there is no evidence that the operation continued as before and Mrs Mansfield at the hearing stated that the neighbour had been evicted. The Tribunal was satisfied on the basis of the evidence that the Applicant had taken appropriate steps to ensure the end of the garage operation at the latest by the time the locks were changed at the end of August 2018. The Tribunal did not consider that the tenants of a residential property have any right to insist that a neighbouring property should be fully cleared of items before they need to pay rent for the property they occupy.

The Tribunal considers that even if one were to find that rent could have been retained for the specific purpose of getting the landlord to act, in this case the landlord had acted once the matter had been brought to his attention and had at the very least by changing the locks at the end of August 2018 dealt with any nuisance which may have arisen from a neighbour using the neighbouring property for a garage operation. At the very last at that point any retained rent should have been paid over. Certainly in terms of the case law quoted above and right to retain rent would also end when the Respondents moved out of the premises as they no longer can have any interest in the Applicant performing any obligation he may have had after that date. As in the case in question, the Respondents had not made a claim for damages in this case and had not sought a rent reduction through the Tribunal at any stage.

The Tribunal thus finds that the Respondents are due the rental payments of £800 for the month of July 2018 and £895 for the month of September 2018 to the Applicant.

3. The pro rata amount up to 17th October 2018

The Applicant's position was that he would not ask for rent after 17 October 2018 but thought until then the Respondents should pay. The Respondents position was that as they moved out because they had received a Notice to Quit the rent should not be due.

The tenancy commenced on 1 December 2016 for a period of 6 months, which means that the initial ish date for the tenancy was 2 June 2017. Clause 5 of the Tenancy Agreement then states that if not terminated the tenancy would continue on the same terms, thus for another 6 months and so on thereafter. As it was raised by the Respondents that they had received legal advice from Shelter in the weeks prior to the hearing that the Notice to Quit was not a valid Notice to Quit and as the Applicant stated that since he had issued the Notice to Quit he had realised that it may not be a valid notice, the Tribunal found it agreed by the parties that the Notice to Quit was flawed. Although it gives 40 days notice and contains the information prescribed to be given to tenants in a notice to quit, it is not issued for an ish date of the tenancy.

The consequence would normally be that the contractual obligations for both parties, such as for example the payment of rent, would continue past the date stated in the Notice to Quit.

Neither party was of the view that there could be an obligation of the Respondents to pay rent after 17 October 2018. The question is how long the duty would remain in place in these circumstances.

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In this case it was clear that the Applicant had expressed that he wished to terminate the tenancy agreement earlier than the next ish date on 2 December 2018. He also stated in his text of 4 September 2018: "You know what, I'm just going to issue you a notice to leave, I've had enough."
The Tribunal considered that this was a clear indication that the Applicant no longer wished to be bound by the tenancy agreement and had conveyed that to the Respondents.
The Notice to Quit asked the Respondents to quit the premises "by" 17 October 2018. The Respondents read this as meaning at the latest on 17 October 2018.
They did not find any provision in the tenancy agreement requiring them to give a specific date under these circumstances prior to moving out.
The Applicant's position was that because they had not specified a date, he should be entitled to rent until the date he stated in the Notice to Quit.
However, given the clear statement by the Applicant that he no longer wished to be bound by the tenancy agreement and the subsequent removal of the Respondents in reaction to this statement, the Tribunal considered that essentially the parties had agreed to end the tenancy early and the Respondents had shown their agreement to an earlier date by moving out, albeit reluctantly. It was not them who initiated the move and their moving out was clearly only an action in reply to the Notice to Quit by the Applicant.
It became clear during the proceedings that the Respondents had not taken legal advice regarding the Notice to Quit prior to moving out, although the Notice to Quit clearly stated that landlord must get an order for possession from the court before the tenant can be lawfully evicted. Although Mrs Mansfield stated at the hearing that they had not wished to leave, because they did not in any way resist the Notice and moved out the Tribunal considers that even a reluctant move can be interpreted as a mutual agreement to end the tenancy for the purpose of determining whether rent can be asked for after the date of the Respondents moving out as it ultimately determines that question in favour of the Respondents.
In these circumstances the Tribunal considers that the contract had come to an end at the end of September 2018. The Tribunal considers that the Applicant cannot insist on payment pro rata of rent for October 2018, having clearly expressed that he did not wish to be bound by his obligations under the tenancy agreement and by the Respondents moving out and thus their implied acceptance that the tenancy should then end.
The Tribunal finds that the Respondents do not owe to the Applicant rent pro rata until 17th October 2018 of £500.

Observation:
Neither party had obtained legal representation in this case and The Tribunal in this case has only determined the specific questions of specific sums claimed by the Applicant against the Respondents and it is outwith the scope of the case to deal with certain other matters mentioned in passing by the parties, such as the Respondents stating that the move caused them expenses of £4,000. The Tribunal considers that it has addressed the matters brought before it on the basis of those matters raised by both parties that were relevant for the determination of the case.
At the hearing on 30 April 2019 the Respondents took issue with the Applicant raising the proceedings without having issued an invoice to them for the outstanding rent previously. The Tribunal first of all found it highly unlikely that the Respondents would not have been aware that the Applicant was seeking payment of the

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outstanding rent as he mentioned this is the text to their telephone number on 30 September 2018. However, even if the Respondents for whatever reasons may not have received that particular text, the Tribunal considers it clear from the previous text exchanges between the Applicant and the Respondents that he was insisting on payment of all rent and in particular of the September rent at the rate of £895. The Tribunal did not consider that the application was premature.

Calculation of sum due:
The Tribunal was asked to grant a payment order for the sum of £2,670. The Tribunal had decided that the only payment due to the Applicant are the rent of the reduced sum of £800 for the month of July 2018 as this was not paid and as the Tribunal was satisfied that the agreement regarding rent reduction included the month of July 2018 as stated above and the full rent of £896 for the month of September 2018 as this remained unpaid and as the Tribunal was satisfied that as of 1 September 2018 the agreement for rent reduction had come to an end and the reason for the reduction no longer persisted. The Tribunal also did not find that payments of rent pro rata were due for the month of October 2018 after the Respondents moved out. Thus the Tribunal considers that the payment due by the Respondents to the Applicant is the amount of £1,695.

Decision:
The Tribunal makes an order for payment by the Respondents to the Applicant for the sum of £1,695.

Right of Appeal

In terms of Section 46 of the Tribunal (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.

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Legal Member

5 May 2019
Date