

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/18/1538

**Re: Property at 54 Hawthorn Road, Langlee, Galashiels, TD1 2LQ ("the
Property")**

Parties:

**Mr Steven Evison, Mrs Elizabeth Evison, c/o Edwin Thompson LLP, 76
Overhaugh Street, Galashiels, TD1 1DP; Gilson Grey LLP, 29 Rutland Square,
Edinburgh, EH1 2BW ("the Applicant")**

**Mr Kelvin Stewart, 17 Meikle Kemp Lane, Galashiels, TD1 2QQ ("the
Respondent")**

Tribunal Members:

Alan Strain (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that the Order for Payment in the sum of £2,772.60 be
granted.**

Background

**This is an application by the Applicant for payment in respect of rent arrears due
from the Respondent in terms of section 16 of the Housing (Scotland) Act 2014 (Act)
and Rule 70 of the Tribunal Procedure Rules.**

**The following documents were lodged with the application which was received on 18
June 2018:**

- 1. Tenancy Agreement signed and dated 16 and 18 March 2017 which stated
that the tenancy was for the initial period 17 March 2017 to 18 September
2017; and**

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2. Statement of Rental Arrears as at 11 June 2018 showing rental arrears of £3812.60.

The Tribunal received written representations from the Respondent's agents date 23 August 2-18 on 27 August 2018.

Those written representations dispute the amount of rent arrears due.

Case Management Discussion (CMD)

The case called for a CMD on 3 September 2018. The Applicants were represented by Ms Lenihan, Solicitor. The Respondent appeared in person.

Ms Lenihan opposed the written representations being allowed given that they were received after the Tribunal deadline of 23 August. The Respondent asked for these to be received late. The Tribunal considered the submissions of both parties on whether or not to allow the written representations to be received late. The Tribunal decided that there was no prejudice to the Applicants in allowing the written representations to be received late and that it was in accordance with the overriding objective to do so.

The Respondent could have, in any event, simply stated his defence at the CMD.

The parties accepted that the Respondent had been a tenant under the Tenancy Agreement from 17 March 2017 until 17 May 2018. It was accepted that a deposit of £570 had been paid and utilised towards rent arrears. It was accepted that the monthly rent was £470.

Ms Lenihan stated that the sums due at the date of the CMD were £3,242.60. This figure was arrived at after deducting the deposit of £570.

The Respondent accepted that the sum of £2,772.60 was due by him in respect of rent arrears. The balance of £470 was in dispute.

Ms Lenihan sought interest at the judicial rate which failing at the contractual rate on the sums due. The Respondent opposed the award of interest and stated that if any was due it should be at the contractual rate in the Tenancy Agreement.

Ms Lenihan also sought expenses in respect of Rule 40 of the Procedure Rules in respect of unreasonable behaviour on the part of the Respondent.

The Tribunal considered that it could not be satisfied at this stage to make any order in respect of interest, expenses or the balance of rent arrears in dispute of £470. The Tribunal accordingly fixed a Hearing on these matters for 15 October 2018 at 10am.

The Tribunal was satisfied that the sum of £2,772.60 was due and granted an order for payment by the Respondent to the Applicant in that amount. The Tribunal had due regard to the overriding objective in doing so.

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The Tribunal granted the order for payment in the sum of £2,772.60 by the Respondent to the Applicant and continued the disputed issues to a Hearing

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.

Alan Strain

Legal Member/Chair

3 September 2018

Date

***Insert or Delete as required**