



**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/PR/18/0901**

**Re: Property at 8 Tayview Flats, 12 Dock Street, Dundee, DD1 4BT (“the Property”)**

**Parties:**

**Tayside Roofing Ltd now known as V & S Properties Tayside Ltd, 39 Boniface Road, Invergowrie, Dundee, DD2 5DW (“the Applicant”)**

**Mr George Ruddiman, 17 Ballantrae Place, Dundee, DD4 8QQ (“the Respondent”)**

**Tribunal Members:**

**Lynsey MacDonald (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted.**

**1. Background**

- 1.1. The Applicant sought an order for payment in respect of rent arrears. An application in terms of Rule 80 (Application to Adjust Recoverable Rent) was received by the Tribunal on 11<sup>th</sup> April 2018. The application was subsequently amended to an application in terms of Rule 70 (Civil Proceedings in Relation to an Assured Tenancy).
- 1.2. The Applicant lodged a copy of the tenancy agreement, and subsequently lodged an AT5 form and copies of text messages sent to and from the Respondent.
- 1.3. The Tribunal originally fixed a Case Management Discussion for 17<sup>th</sup> August 2018. The Tribunal was unable to deal with the application on

that date, as service upon the Respondent had failed. The details of that Case Management Discussion are contained in a Note issued on that date.

- 1.4. The Tribunal next fixed a Case Management Discussion for 19<sup>th</sup> June 2019. An application for service by advertisement in terms of Rule 6A was granted, and service was effected by advertisement on the Tribunal website between 15<sup>th</sup> May 2019 and 19<sup>th</sup> June 2019.

## 2. The Case Management Discussion

- 2.1. The Applicant was represented at the Case Management Discussion by Mrs Sandra Herd, who is a Director of the company, and was accompanied by Ms Vicki Robbins in the capacity of supporter.
- 2.2. By 1400 hours, the Respondent had failed to attend at the venue. The Tribunal delayed in calling the Case Management Discussion, in order to allow extra time for the Respondent to attend, in the event that the Respondent was running late. The Respondent failed to attend the Case Management Discussion.
- 2.3. The Mrs Herd invited the Tribunal to proceed in the absence of the Respondent, and to grant the order. The Clerk had earlier confirmed that the Respondent had not been in contact with the Tribunal, and in particular written representations had not been received. The Tribunal was satisfied that, service having been effected in terms of the Rules, it was fair to proceed in his absence.
- 2.4. Mrs Herd informed the Tribunal that the Applicant was now known as V & S Properties Tayside Ltd, and asked that the application be amended accordingly. The Tribunal granted the motion.
- 2.5. Mrs Herd lodged an up to date rent statement, copies of text messages sent to and from the Respondent, and a letter to the Respondent.
- 2.6. The Tribunal proceeded on the basis of the written documents which had been lodged, together with submissions from Mrs Herd.

## 3. Findings in Fact

- 3.1. The Applicant and the Respondent entered into a tenancy agreement with the start date for the tenancy being 30<sup>th</sup> April 2016. The lease was signed by both parties on 1<sup>st</sup> May 2016.
- 3.2. Prior to the lease being signed, the Respondent was given, and duly signed, an AT5 form, indicating that the tenancy was to be a short

assured tenancy. The AT5 form was served after the start of the tenancy, and is therefore invalid.

- 3.3. The period of the lease was three years, and specified an end date of 1<sup>st</sup> May 2019, and provided for monthly renewal.
- 3.4. The rent payable was £770 per calendar month.
- 3.5. The Respondent made rent payments until January 2018. He made no payments after January 2018.
- 3.6. Under the terms of the tenancy, rent was payable until 1<sup>st</sup> May 2019.
- 3.7. On 17<sup>th</sup> March 2018, Mr Victor Herd, on behalf of the Applicant, hand delivered a letter to the Respondent advising that the Respondent was “no longer a suitable tenant” and giving notice that the Respondent was to move out with immediate effect.
- 3.8. On 26<sup>th</sup> March 2018, Mrs Herd attended at the property to carry out a flat inspection, and found that the Respondent had vacated the property.
- 3.9. On 24<sup>th</sup> July 2018 and Respondent asked the Applicant to tell him how much money he owed the Applicant in respect of rent for the property.

#### 4. Reasons for Decision

- 4.1. Although the tenancy was described as a short assured tenancy, the AT5 notice was not correctly served, and is therefore invalid. Accordingly, the Applicant would only have been entitled to raise an action for eviction for grounds. The Tribunal expresses no view as to whether such grounds existed.
- 4.2. On any view there have been flaws in the procedure adopted in attempting to end the tenancy. Those flaws arose from 17<sup>th</sup> March 2018, when the Respondent was asked to leave the property. The statutory requirements for notice were not adopted, and notices were not served. Accordingly the Tribunal is not prepared to consider that rent is lawfully due from 17<sup>th</sup> March 2018 onwards.
- 4.3. In any event, the Respondent left the property sometime between 17<sup>th</sup> March 2018, when he was ‘given notice’, and 26<sup>th</sup> March 2018, when the property was discovered vacant.
- 4.4. On 7<sup>th</sup> February 2018, the Respondent accepted in his text message to the Mrs Herd that he had not paid rent, which was due, in February. He sought to make arrangements to make future rent payments, and in particular asked to make payments at the end of the month (rather than

at the start). Notwithstanding his assurances that the rent would be paid, the Respondent did not make any further rent payments.

- 4.5. The Tribunal accepted that rent was lawfully due in respect of 1<sup>st</sup> February 2018 to 17<sup>th</sup> March 2018, in the amount of £1,167.42 (being £770 for February, and £397.42 for sixteen days of March).
- 4.6. For the reasons outlined above, the Tribunal did not accept that rent was lawfully due for 17<sup>th</sup> March 2018 and onwards.

## 5. Decision

An order for payment is granted in the amount of £1,167.42.

## 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.**

Lynsey MacDonald

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**Legal Member/Chair**

19/06/19  
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**Date**