



**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/19/1204**

**Re: Property at 78 Cuiken Terrace, Penicuik, EH26 0DU (“the Property”)**

**Parties:**

**Mr Mahmoud Jamiolahmady, Mr Mehran Sohrabi, c/o The Key Place, 6 Bank Street, Penicuik, EH26 9BG (“the Applicant”)**

**Mr Ian Douglas, 78 Cuiken Terrace, Penicuik, EH26 0DU (“the Respondent”)**

**Tribunal Members:**

**Rory Cowan (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a Payment Order in the sum of £4,510.59.**

- Background

Following an earlier Case management Discussion (CMD) on 27 June 2019, a Direction was issued under Rule 16 and a further CMD was scheduled. The application was thereafter considered at a further CMD on 7 August 2019. In terms of the Direction, the Applicant was to prepare and lodge an accurate rent statement and the Respondent was to lodge a Time to Pay Application if he wished to seek Time to Pay. In advance of the CMD on 7 August 2019, the Applicant’s representatives lodged an amended rent statement detailing arrears of £4,450.59 as at 17 July 2019.

- The Case Management Discussion

The Applicant was represented by a Mr Young and a Mrs McBeth. The Respondent appeared in person. The Applicant’s representatives referred to the amended rent schedule and confirmed that the figure contained therein was accurate. The

Respondent confirmed that he had seen the schedule produced in response to the Direction and that the figures contained therein were accurate.

The Applicant's representatives made a motion to have the sum claimed in this application amended to reflect that sum – the schedule having previously been intimated on the Respondent – and the Respondent confirmed that he had no objection to that motion.

The Respondent indicated that the arrears had arose as a result of problems he had with Universal Credit and although strenuous attempts had been made by him to resolve matters and to obtain back dated payments these issues had not been resolved as yet although his benefits had been reinstated.

The Respondent indicated that he had no means, other than by way of a back dated benefit application to pay the arrears and therefore indicated that he did not want to make an application for Time to Pay.

As the Respondent had agreed that there were arrears and the level of those arrears, there was no need for a hearing to determine either the existence, the entitlement to or the level of any arrears.

The Applicants thereafter sought to recover the sum of £240 described as "other costs". It was clarified that these related to:

- 1) The costs incurred by the Applicant in serving notices (a section 33 Notice and a Notice to Quit); and
- 2) The costs incurred by the Applicant in lodging this application and a related application for a possession order (which had been granted).

The Applicant's representative relied upon the terms of the lease between the Applicant and the Respondent and in particular clause 73 of same, which states *inter alia*:

"73. ....The Tenant agrees to meet all costs, fees and outlays incurred by the Landlord or his Agent including legal or administrative fees in pursuing payment from the Tenant of any arrears of rent....".

Along with the papers lodged with the Application, the Applicant has provided copies of invoices rendered to him for these 2 costs.

The Tribunal formed the view that, whilst there was a contractual right to recover costs incurred in relation to "pursuing payment from the Tenant of any arrears of rent" such a provision did not allow recovery for the costs associated with a recovery based on section 33 of the Housing (Scotland) Act 1988. Section 33 is a landlord's automatic right to seek recovery of a property at the end of a short-assured tenancy, not a right exercisable due to default by a tenant. As such, the Tribunal could not entertain a claim for the costs incurred in serving of notices or the associated possession action.

Notwithstanding, the pursuit of a payment order is different in that it is something that could be covered by the terms of clause 73 of the lease between the parties. Nothing in the said clause limits the landlord's ability to recovery of only "reasonable costs", but in any event the claimed costs did not appear to be unreasonable. As such, the Tribunal decided to award the sum of £60 in addition to the rent arrears being half the sum claimed for both the Application for a Possession order (Form E) and the Application for a Payment Order (Form F).

- Findings in Fact

- 1) That the Applicant and Respondent entered into a lease agreement on 13 November 2017 for the property at 78 Cuiken Terrace, Penicuik.
- 2) That the rent due under the lease was £650 per calendar month.
- 3) That as at 17 July 2019 the Respondent was in arrears of rent totalling £4,450.59.
- 4) That the Applicant has incurred the cost of £50 plus VAT (£60) in pursuing arrears of rent from the Respondent.

- Reasons for Decision

The arrears of £4,450.59 were accepted by the Respondent. In terms of clause 73 of the lease between the parties, the Applicant is entitled to recover from the Respondent certain costs incurred in pursuing arrears of rent. Those costs were £60 including vat.

- Decision

A Payment Order in the sum of £4,510.59 was granted in favour of the Applicant.

## 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.**

Rory Cowan

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Legal Member/Chair

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Date 7 August 2019