

**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/19/1133**

**Re: Property at Namur, North Street, Moniaive, Thornhill, DG3 4HR (“the  
Property”)**

**Parties:**

**Mr John Murphy, Corner View, Fowler Lane, Leyland, PR25 3RJ (“the  
Applicant”)**

**Miss Faye Hardy, c/o 50 Church Street, Dumfries, DG2 7AS (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member) and Elizabeth Currie (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that the application should be granted and made an  
Order for Payment by the Respondent to the Applicant of the sum of £2,700.**

**Background**

By application, received by the Tribunal on 11 April 2019, the Applicant sought an Order for Payment in respect of unpaid rent that had become lawfully due by the Respondent to the Applicant. The sum sought was £3,200.

The application was accompanied by a copy of a Letting Agreement between the Parties, commencing on 15 October 2017 at a rent of £500 per month and a Rent Statement showing arrears as at April 2019 of £3,200.

On 7 May 2019, the Applicant provided the Tribunal with a copy of an e-mail confirming that the Respondent was vacating the Property on the following day and, on 17 May 2019, the Applicant advised the Tribunal that the amount sought should be reduced to £2,700, as he had retained the Applicant’s deposit of £500.

A Case Management Discussion held on 9 August 2019 was continued by the Tribunal, as it appeared the Respondent had only very recently received a copy of the application. The continuation would allow her to apply for a Time to Pay Direction

if she so wished. The Tribunal accepted the Applicant's request to reduce the amount sought to £2,700.

In written representations dated 10 September 2019, the Respondent pointed out that the Applicant had not become a registered landlord until 28 February 2019. In addition, he had not lodged the deposit in an approved Tenancy Deposit Scheme. The Respondent was prepared to pay the rent from the date of the Applicant's landlord registration (28 February 2019) to the date she vacated the Property (8 May 2019). She calculated the arrears at £625, when the deposit was deducted. She stated that she intended to bring a Time to Pay Direction application to the Tribunal at the continued Case Management Discussion.

The Respondent did not make an application for a Time to Pay Direction and, at the continued Case Management Discussion held on 20 September 2019, the Applicant conceded that he had not registered as a landlord until 28 February 2019 and that he had not lodged the deposit in an approved tenancy deposit scheme, but stated that there was still a contract between the Parties and rent of £2,700 was due to be paid. The Tribunal decided to refer the application to a full Hearing.

### **The Hearing**

The Hearing took place by means of a telephone conference call at Glasgow Tribunals Centre, 20 York Street, Glasgow on the afternoon of 16 December 2019. The Applicant's daughter represented him in the conference call and confirmed that no money had been received from the Respondent since the date of the second Case Management Discussion and asked the Tribunal to make the Order for Payment as sought in the application. The Respondent did not participate and was not represented.

### **Reasons for Decision**

The Tribunal determined that the argument of the Respondent that she should only be liable to pay rent from the date of the Applicant's registration as a landlord had no legal basis whatsoever. A tenant in such a situation had no legal right to withhold or refuse to pay rent. In any event, the Respondent's arrears had accumulated before she became aware of the Applicant's failure to register at the time of creation of the tenancy. Further, the failure of the Applicant to lodge the deposit in an approved tenancy deposit scheme did not justify non-payment of rent. The Respondent could, within three months of the tenancy ending, have made an application to the Tribunal in respect of that failure but she had not done so.

The Tribunal was satisfied that the sum sought (£2,700) was lawfully due by the Respondent to the Applicant and that an Order for Payment should be made.

### **Decision**

The Tribunal determined that the application should be granted and made an Order for Payment by the Respondent to the Applicant of the sum of £2,700.

### **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.

  
\_\_\_\_\_  
Legal Member/Chair

16 December 2019  
\_\_\_\_\_  
Date

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



**Order for Payment issued by the First-tier Tribunal for Scotland**

Reference number: FTS/HPC/CV/19/1133

Date Order was granted :16 December 2019 in absence of the Respondent

Parties:

Mr John Murphy, Corner View, Fowler Lane, Leyland, PR25 3RJ ("the Applicant")

Miss Faye Hardy, c/o 50 Church Street, Dumfries, DG2 7AS ("the Respondent")

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment of the undernoted sum to the Applicant:

Sum of Two Thousand Seven Hundred Pounds (£2,700)

This Order is warrant for all lawful execution thereon.

Date: 16 December 2019

Legal Member:

A handwritten signature in blue ink, appearing to read 'J. Smith'.

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



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