



**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/18/1155**

**Re: Property at 14 Guthrie Street, Letham, Angus, DD8 2PS (“the Property”)**

**Parties:**

**Mr Cameron Don, 20 Qvenda Drive, Canning Vale, W Australia, WA6 155, Australia (“the Applicant”)**

**Ms Kirsty Wilkinson, 42 Middleton Park, Brechin, DD9 7HW (“the Respondent”)**

**Tribunal Members:**

**Petra Hennig-McFatrige (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**Procedural Background:**

The tribunal received an application dated 10 May 2018 for payment of the sum of £3,273.36 consisting of a claim for rent arrears for £2,667.26, damages and repairs for £246.34 and additional expenses for £360.00.

The Applicant named as the Respondents the tenant of the property Kirsty Wilkinson and as the Guarantor Tracy Dawkins.

The Application was accompanied by a rent statement showing arrears of £1,965.88, a cleaning invoice for £130.25 and an invoice from MEM Electrical for £118.80 and no vouching for the additional expenses.

The Applicant also lodged in evidence a tenancy agreement for the property dated 28 September 2017 between the Applicant and Kirsty Wilkinson, the tenant, together with AT5 form signed 29 September 2017, a Guarantor Agreement dated 28 September 2017 between the Applicant and a Tracy Dawkins of The Hillock, Glenesk, Brechin, Angus DD9 7YW and an agreement for payment of balance £1,231.34 by Kirsty Wilkinson and Tracy Dawkins with Re/Max Lettings Dundee

dated 26 December 2017 and a letter dated 23 May 2018 confirming that Stephen Crofts of Re/Max Lettings Dundee is acting as the Applicant's representative in the case.

The Tribunal fixed a Case Management Discussion (CMD) for 17 August 2018 and the Applicant and both Respondents named on the application were notified of the date and time.

The person named originally as the second named Respondent Ms Dawkins made no representations and did not attend the CMD.

The first named Respondent Ms Wilkinson sent an email to the Tribunal on 10 August 2018 stating she was struggling to make the Case Management Discussion because she has 3 children and asking "can I not just set up a payment plan to pay the outstanding balance"

She was advised by the Tribunal by email of 13 August 2018 that if she wished to set up a payment plan she would have to arrange this with the Applicant and unless the Applicant advised the Tribunal that the CMD was no longer necessary it would go ahead as previously arranged. She was also advised that she could make an application for a postponement of the CMD but this would have to be done in writing and would have to state reasons for the postponement request. There was no further communication from the Respondent Kirsty Wilkinson and she did not attend the CMD.

The Applicant' Representative Mr Crofts attended the hearing on behalf of the Applicant.

#### **The Hearing:**

The Legal Member pointed out that the issue of jurisdiction of the Tribunal regarding any matters arising out of a Guarantee Agreement rather than the Landlord/Tenant relationship is a matter still to be fully determined and that the Tribunal would ask for representations on this matter. The Convener suggested to fix a further CMD in order for the Applicant or his representative to make representation regarding this. However, the Applicant's representative stated that the application should be amended to remove the second named Respondent Tracy Dawkins from the application and that the Applicant would not pursue the Guarantor further in the course of this application.

The Tribunal allowed this amendment and considers that the application against the tenant could continue as this clearly was within the jurisdiction of the Tribunal in terms of S 16 of the Housing (Scotland) Act 2014 and that removing the Guarantor would not prejudice the tenant's position as her liability was not removed by the existence of a guarantee agreement and the agreement with the Guarantor was entered into to protect the landlord's interest.

The productions were considered in detail and the Legal Member asked for clarification of the sums mentioned in the application as the rent arrears figure did not match the running total of the rent statement printout, the invoices did not match the sum stated relating to damages and repairs and there was no vouching for the item of £360 additional expenses. She further asked for clarification as to where it stated in the tenancy agreement that such additional sums would be payable by the tenant. A further matter raised was that there was a clear agreement signed by the

Respondent on 23 December 2018 and signed by the Applicant's representative on 26 December 2017, which states the amount of the balance outstanding in arrears and cost of damages to 14 Guthrie Street, Letham as at that date at £1,231.34. Mr Crofts explained that this agreement had been reached taking into account the ability of the tenant to pay as per her own payment offer. He was unable to fully explain the sums sued for as stated in the application. On behalf of the Applicant he then asked for a payment order to be made against the Respondent Kirsty Wilkinson for the sum agreed as the sum outstanding of £1,231.34 as per the agreement made in December 2017. He confirmed that no payments had been received towards clearing the sum in terms of that payment plan.

#### **Findings in Fact:**

- 1. Mr Crofts managed the tenancy for the Applicant.**
- 2. Mr Crofts lodged a document at the hearing to amend the sum due to £1,231.34 and removed the Guarantor as the second named Respondent from the Application.**
- 3. The Applicant and the Respondent entered into a Tenancy Agreement with date of entry 3 October 2017(clause 2).**
- 4. In terms of the Tenancy Agreement the rent was set at £826.15 per 4 weeks (clause 3).**
- 5. The Tenant made a payment of £965 as a deposit and had subsequently agreed to have this used as payment towards rent arrears which was so applied on 20 December 2017 as per the calculation shown in the rent statement.**
- 6. She made only one payment of rent of £142.85.**
- 7. She vacated the property some time in December 2017.**
- 8. Clause 15 of the Tenancy Agreement creates liability of the Tenant for cleaning required to reinstate the property. Vouching for cleaning costs was provided.**
- 9. Clause 29 of the Tenancy Agreement creates liability of the Tenant for repairs to the property. Vouching for repairs was provided.**
- 10. The Applicant through his agent Re/Max Lettings Dundee agreed the sum outstanding in arrears and cost of damages for the property at 14 Guthrie Street Letham to be £1,231.34 on 26 December 2017.**
- 11. No payments had been received to clear the balance agreed in terms of the payment plan entered into on 26 December 2017.**
- 12. The payment plan states that if there is a default on the payment plan the full remaining sum will become payable in full.**
- 13. As at the date of the CMD the full sum of £1,231.34 is still outstanding. This sum was agreed by the tenant as the sum due to the landlord arising from the tenancy at the premises at 14 Guthrie Street, Letham.**

#### **Reasons for Decision:**

The tribunal makes the decision on the basis of the written evidence lodged by the Applicant and the evidence given at the hearing by the Applicant's representative on their behalf. The Respondent had suggested in an email that she may set up a payment plan, however, no such plan had been set up at the time of the CMD. She made no other representations and there was no dispute about the facts of the case. The agreement signed by the Respondent on 23 December 2017 clearly confirms the sum due to the Applicant from the tenancy for the premises to be £1,231.34 and

this to be accepted by the Respondent. The sum was agreed by both parties as correct. No payments were received after the payment plan was put in place on 26 December 2017. At the date of the Case Management Discussion on 17 August 2018 the sum was still outstanding. The Tribunal did not consider it necessary to fix a hearing in the case as the facts of the case were not disputed. The Respondent had been advised that the Tribunal can do anything at a CMD it could do at a hearing including making a full decision. There was no valid defence lodged to the action. It is not disputed that the sum of £1,231.34 is still due to the Applicant. Thus the Tribunal considered it appropriate to make a full payment order for the adjusted sum.

**Decision:**

**The order for payment of the sum of £1,231.34 is granted against the Respondent Kirsty Wilkinson**

**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.**

Petra Hennig-McFatrige

**Legal Member**

*17.8.18*  
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**Date**