

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/19/3201

Re: Property at 4A Brook Street, Monifieth, Angus, DD5 4BD ("the Property")

Parties:

**Mr Andrew Butterworth, c/o Alan Masterton Solicitors, 12-14 Maule Street,
Monifieth, DD5 4JN ("the Applicant")**

**Ms Catriona Massie, formerly residing at 4A Brook Street, Monifieth, Angus,
DD5 4BD, and whose present whereabouts are unknown ("the Respondent")**

Tribunal Members:

Neil Kinnear (Legal Member)

Decision (in absence of the Respondent)

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

Background

This is an application for a payment order dated 8th October 2019 and brought in terms of Rule 70 (Application for civil proceedings in relation to an assured tenancy under the 1988 Act) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant seeks payment of arrears in rental payments of £7,445.16 due by the Respondent in respect of her tenancy of the Property until she vacated it on 7th October 2019, together with damages of £600.00.

The Applicant provided with his application copies of the assured tenancy agreement, rent arrears statement, and invoice for extensive clearance of items left at the Property after the departure of the Respondent.

The assured tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

The Respondent could not be validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal, as she could not be traced and her current whereabouts are unknown.

Service was validly effected by advertisement upon her in terms of Rule 6A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, and the Tribunal was provided with the Certificate of Service by advertisement.

Case Management Discussion

A Case Management Discussion was held on 7th February 2020 at Caledonian House, Greenmarket, Dundee. The Applicant did not appear, but was represented by Mr Campbell, legal administrator. The Respondent did not appear, nor was she represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal was invited by Mr Campbell with reference to the application and papers to grant an order for payment of the sum of £8,045.16. He explained that the Respondent had left the Property on 7th October 2019, and had accumulated arrears of rent in the sum of £7,445.16 as shown on the rent arrears statement provided.

After recovering possession, Mr Campbell noted extensive possessions of the Respondent left in the Property, and he required to instruct a professional clearance firm to remove all of those, which filled that firm's vans to capacity on four occasions.

The Landlord required to pay £600.00 in terms of the invoice produced for that work. Mr Campbell produced photographs on his mobile phone which showed the extensive amount of material which required to be removed.

Statement of Reasons

Section 16 of the *Housing (Scotland) Act 2014* provides as follows:

"16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3) Part 1 of schedule 1 makes minor and consequential amendments.”

Accordingly, the Tribunal now has jurisdiction in relation to claims by a landlord (such as the Applicant) for payment of unpaid rental and damages against a tenant (such as the Respondent) under an assured tenancy such as this.

The Tribunal considered the terms of the assured tenancy agreement, the copy rent arrears statement, and Mr Campbell's submissions, and was satisfied that this disclosed an outstanding balance due by the Respondent to the Applicant in respect of rent arrears to 7th October 2019 of £7,445.16.

The Respondent is liable for the cost of clearing the Property in terms of the lease, and the Tribunal was satisfied that the Applicant is entitled to recover the sum of £600.00 disclosed in the invoice provided.

Decision

In these circumstances, the Tribunal will make an order for payment by the Respondents to the Applicant of the sum of £8,045.16.

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.

N Kinnear

07/02/20

Legal Member/Chair

Date