

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 the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) and Rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules)

Chamber Ref: FTS/HPC/CV/19/0178

**Re: Property at 13 Woodburn Loan, Dalkeith, EH22 2ES
 (“the Property”)**

Parties:

**Ms Jennifer Wilson, 1 Still Haugh, Fountainhall, Galashiels
 (“the Applicant”)**

**AM Lettings Limited, 11 South Street, Dalkeith, EH22 1AH
 (“the Applicant’s Representative”)**

**Mr Mark Black and Mrs Pauline Black, 13 Woodburn Loan, Dalkeith, EH22 2ES
 (“the Respondents”)**

Tribunal Members:

Susanne L. M. Tanner Q.C. (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent should pay to the Applicant the sum of ONE THOUSAND ONE HUNDRED AND SIXTEEN POUNDS (£1,116.00) STERLING; and made an Order for Payment in respect of the said sum.

STATEMENT OF REASONS

1. Procedural Background

- 1.1. On 17 January 2019 the Applicant made an Application to the tribunal “the Application”) under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”) for civil proceedings in relation to an assured tenancy under the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”).
- 1.2. In the Application the Applicant seeks payment from the Respondent of the sum of £1116.00 “or such other amount that is due at the date of any tribunal hearing” in respect of rent arrears under the private residential tenancy between the parties.
- 1.3. The Applicant's Representative lodged the following documents with the Application:
 - 1.3.1. a copy of the Private Residential Tenancy agreement between the Applicant and the Respondents dated 12 January 2018;
 - 1.3.2. A copy rent statement for the period 11 January 2018 to 12 January 2019; and a copy rent statement for the period 11 January 2018 to 11 August 2018;
 - 1.3.3. a copy of the Notice to Leave to the Respondents dated 22 August 2018, with proof of service by email on 22 August 2018;
 - 1.3.4. A letter from McDougall McQueen to the Applicant dated 17 January 2019 confirming instructions to market the Property for sale once vacant possession has been obtained.
- 1.4. On 18 January 2019 the tribunal's administration obtained the Title Sheet to the Property which shows that the Applicant has been the registered proprietor of the Property since 9 December 2015.
- 1.5. On 25 January 2019, the Application was accepted for determination by a tribunal.
- 1.6. On 18 February 2019 the Applicant authorised the Applicant's Representative to act on her behalf and asked for all correspondence to be sent to Jackie Barr at the Applicant's Representative.

1.7. Both parties were notified by letters dated 28 February 2019 of the date, time and place of Case Management Discussion ("CMD") in relation to the Application to take place at 1400h on 22 March 2019 at George House, 126 George Street, Edinburgh, EH2 4HH. The Respondents were invited to make written representations in response to the Application by 17 March 2019. Both parties were advised that they were required to attend the CMD. The parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application which may involve making or refusing an eviction order. The parties were also advised that if they do not attend the CMD this will not stop a decision or order being made if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair.

1.8. Service of the Application documentation and notification of the date, time and place of the CMD was served on the Respondents by Sheriff Officers on 28 February 2019, by depositing through the letterbox at the Property.

1.9. On 3 March 2019, the tribunal issued Directions to the Applicant and Applicant's representative requiring them to provide by 14 March 2019 written notice of any increase in the sum sought in the Application for a payment order; together with an updated rent statement as evidence for any such increase; and any claim for interest from the date of the tribunal's decision.

1.10. On 8 March 2019, the Applicant's representative sent an email to the tribunal's administration with copies of documents already submitted (Notice to leave to the Respondents dated 22 August 2018, rent statement to 11 August 2018, email to Respondents 22 August 2018), together with additional documents:

1.10.1. an updated rent statement to 12 February 2019,

1.10.2. email to Respondents dated 7 March 2019

1.10.3. Letter from McDougall McQueen Solicitors and Estate Agents to the Applicant dated 17 January 2019 confirming the Applicant's instructions to market the Property for sale upon obtaining vacant possession, and

1.10.4. photographs (undated) of hand delivery of a letter to the Respondents at a property.

1.11. In the email of 8 March 2019, the Applicant's Representative did not provide written notice of any increase in the sum sought in the Application for a payment order.

1.12. The Respondents did not lodge any written representations prior to the CMD or make any contact with the tribunal's administration.

2. CMD: 22 March 2019 at 1400h, George House, 126 George Street, Edinburgh, EH2 4HH

- 2.1. Ms Barr from the Applicant's Representative attended the CMD on behalf of the Applicant.
- 2.2. The Respondents did not attend the CMD or make any contact with the tribunal's administration.
- 2.3. The tribunal, being satisfied that the requirements of Rule 24(1) regarding the giving of notice of a hearing have been duly complied with, proceeded with the Application upon the representations of the party present and all the material before it, in terms of Rule 29 of the 2017 Rules.
- 2.4. The tribunal chair noted that the second rent statement lodged with the Application of 17 January 2019 showed rent arrears as at 12 January 2019 of £1116.00.
- 2.5. The tribunal chair noted that the rent statement to 12 February 2019 which was lodged in the related eviction proceedings (EV/19/0177) showed rent arrears of £1816.00 as at 12 February 2019.
- 2.6. Ms Barr advised that the current rent arrears as at 22 March 2019, which includes rent of £700.00 due on 12 March 2019, are £2516.00.
- 2.7. Although the Applicant's Representative had produced the statement to 12 February 2019 with her email of 8 March 2019, the Applicant's Representative has not notified an intention to increase the sum in the Application to the Respondents 14 days before the Case Management Discussion.
- 2.8. The tribunal had regard to the terms of Rule 14A of the procedure rules which relates to a request by the Applicant to amend the application in respect of matters other than new issues and provides that: *"(1) Where a new issue is not raised, a party may request to amend the application, including the sum claimed, by intimating the amendment to any other party and the First-tier Tribunal at least 14 days prior to a case management discussion or hearing; and (2) The First-tier Tribunal may consent to the amendment on such conditions, if any, as the First-tier Tribunal thinks fit."*
- 2.9. Due to the absence of the Respondents at the CMD and the fact that no such amendment had been notified to them (despite the provision of an updated

rent statement to 12 February 2019), the tribunal chair stated that should the Applicant wish to increase the sum sought in the Application by amending the sum, that amendment would require to be notified to the Respondents and the CMD would require to be adjourned. Alternatively, the Applicant could seek the sum of £1116.00 in the Application, as representing the arrears as at 12 January 2019 and it would be open to the Applicant to make a further Application in respect of any further rent arrears accrued after 13 January 2019.

2.10. Ms Barr confirmed that she wished the tribunal to make a decision on the Application for the payment order in the sum of £1116.00 as representing the rent arrears as at 12 January 2019 and that she would make a further application in respect of the arrears accrued between 13 January 2019 and the date of the enforcement of the eviction order which had been granted in the related eviction proceedings.

3. The tribunal makes the following findings-in-fact:

3.1. The Applicant is the Proprietor of the Property.

3.2. There is a Private Residential Tenancy between the Applicant and the Respondents for the Property dated 12 January 2018.

3.3. The start date for the tenancy was 12 January 2018.

3.4. The rent payable is £700.00 per calendar month payable monthly in advance on the date of entry and thereafter on or before 12th of each month.

3.5. The rent has remained at £700.00 per calendar month from 12 January 2018 to 22 March 2019.

3.6. As at the date of making the Application on 17 January 2019 the Respondent was in arrears of rent of £1116.00 for the period to 12 January 2019.

4. Discussion

4.1. The tribunal determined on the basis of the Application (including supporting documents) and the oral representations made on behalf of the Applicant; that the Applicant had proved on the balance of probabilities that the Respondents owe the Applicant the sum of £1116.00 sought in respect of rent arrears to 12 January 2019.

4.2. On the basis of its findings in fact, the tribunal determined that an Order for Payment should be made in respect of the sum of £1116.00 sought on behalf 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.

S Tanner

22 March 2019

**Susanne L. M. Tanner Q.C.
Legal Member/Chair**