



**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/18/1768

Re: Property at 27 Dunbar Street, Lossiemouth, IV31 6AR (“the Property”)

Parties:

Mr Ian Strachan, 2 Errol Place, Newburgh, Ellon, AB41 6BW (“the Applicant”)

**Mr Mustapha Elmourei, Hill House, Dunbar Street, Lossiemouth, IV31 6RD
 (“the Respondent”)**

Tribunal Members:

Helen Forbes (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for payment should be granted.**

Background

1. This is an application in terms of Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). The Applicant is seeking an order for payment in the sum of £3000 in terms of section 16 of the Housing (Scotland) Act 2014.
2. The Tribunal had before it the following documents:
 - (i) Application dated 20th July 2018
 - (ii) Tenancy agreement between the parties dated 22nd July 2014.
 - (iii) The Applicant’s bank statements showing rental payments
 - (iv) Notice by Tenant dated 1st June 2016.
 - (v) Certificate of Citation by Sheriff Officers dated 10th September 2018

Case Management Discussion

3. The Tribunal held a Case Management Discussion on 26th September 2018. The Applicant was present and was represented by Ms Lesley Clark, Solicitor, appearing as a local agent. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 as service upon the Respondent had been made by Sheriff Officers on 7th September 2018. Ms Clark moved for an order in the sum of £3000. The rent for the property was £600 per month. The tenancy commenced on 22nd July 2014 and ended on 31st July 2016. It was a Short Assured Tenancy for an initial period of 6 months, continuing on a monthly basis thereafter. There were five rental payments outstanding, totalling £3000.
4. The Tribunal asked for further clarification in relation to the fact that the tenancy ended on 31st July 2016 but the Applicant was seeking rent to 23rd August 2016. Ms Clark said that the Applicant was relying on paragraphs 4 and 30 of the tenancy agreement, and that the tenancy could only be brought to an end by the Respondent on an end date, which was the 23rd of each month. The Tribunal questioned this interpretation, as the tenancy agreement specified 'the end date' as being 23rd January 2015. The Tribunal suggested that the Respondent would have been due to pay the rent to the end date if he had given notice during the first six months of the lease; however, thereafter, there was no requirement in the tenancy agreement that the tenant give notice to any particular date, as paragraph 30(3) provides that the tenant must give two months notice to terminate the tenancy at the end date, then stating 'or after the end date'. Therefore, the Respondent was required to give two months notice, but the notice did not have to be given to the 23rd of the month. It seemed, therefore, that rent was due to the date the Respondent left the property, namely 31st August 2016.
5. There was further discussion on this point. Ms Clark mentioned that there was case law to the effect that the tenancy had to be terminated on an end date by the tenant. The Tribunal offered the opportunity to adjourn to take further instructions on this point, and, if necessary, to source the case law or any other relevant authorities.
6. Ms Clark and the Applicant took the opportunity to adjourn to discuss matters further.
7. The Tribunal resumed and Ms Clark indicated that, having discussed matters and having sought further instructions from the instructing solicitor, the Applicant was keen to conclude matters rather than adjourn to a further Case Management Discussion. Although there was some confusion in the information given by the letting agent as to exactly when the Respondent left the property, with some evidence that the Respondent may have left on a date later than 31st July 2016, the Applicant was seeking to recover the sum of £1938.46. Ms Clark clarified that there had been no payment of rent on 23rd December 2015, 23rd April and 23rd May 2016, resulting in an outstanding sum of £1800. A further sum of £133.46 was outstanding to 31st July 2016. The total due was £1938.46 and Ms Clark moved to amend the sum sought

accordingly. The Tribunal accepted the motion made by Ms Clark and amended the sum sought.

Findings in Fact

8. The lease between the parties is a Short Assured Tenancy with provision for the lease to continue on a monthly basis at the end of the initial 6 month period. In terms of the lease, the rent due was £600 per month. The Respondent has failed to make payment of the rent lawfully due in terms of the lease. The Applicant is entitled to recover the unpaid rent in the sum of £1938.46.

Reasons for Decision

9. The Respondent has failed to make payment of the rent lawfully due in terms of the lease between the parties. The Applicant is entitled to recover the unpaid rent.

Decision

10. An order for payment is granted to the Applicant in the sum of £1938.46.

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.

Helen Forbes

Legal Member/Chair

26/9/18

Date