

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

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**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Rule 70 of The First-tier Tribunal  
for Scotland Housing and Property Chamber (Procedure) Regulations  
2017**

**Chamber Ref: FTS/HPC/CV/18/2405**

**Re: Property at 27 Burnbrae Road, Bonnyrigg, EH19 3EY (“the Property”)**

**Parties:**

**Mrs Donna Ruth McKay, 1 Newton Cottages, Boggs Holdings, Pentcaitland,  
EH34 5BB (“the Applicant”)**

**Mrs Stephanie Gairn or Marshall, 27 Burnbrae Road, Bonnyrigg, EH19 3EY  
 (“the Respondent”)**

**Tribunal Members:**

**Andrew McLaughlin (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that this matter called for a Case Management Discussion at 11:30am on 16 January 2019 in George House, 126 George Street, Edinburgh. The Applicant was represented by Mr Duncan McDonald of Broughton Property Management. The Respondent was also personally present together with her sister-in-law Sarah Johnston who was her Representative.**

**There had been a previous Case Management Discussion which had been adjourned to allow the Applicant to amend the sum claimed to reflect the current level of arrears. At the Hearing today, the Applicant wished to have the sum claimed amended again to the figure of £1,742.00.**

**The Respondent indicated that she accepted that she had rent arrears and that this figure was accurate. Ms Johnston explained that the Respondent had been receiving treatment for alcoholism and she did not dispute that the Respondent had rent arrears of £1,742.00.**

Mr McDonald invited the Tribunal also to award interest on the sum claimed. The Tribunal refused this on the basis that it was not within the Tribunal's powers to award interest on any sum awarded by virtue of a Payment Order.

Mr McDonald also invited the Tribunal to include an additional sum of £18.00 which was said to be contractually due under Condition 12 of the tenancy agreement. This Condition provided that a fee could be charged for, amongst other things, having to chase for unpaid rent.

The Tribunal noted that this Condition of the tenancy indicated that this charge was to be deducted from the deposit if not paid by the Respondent when requested. Mr McDonald confirmed that a deposit had been obtained and was registered with a deposit protection scheme.

The Tribunal therefore refused to allow this sum to be recovered because the tenancy agreement provided that it should be taken from the deposit held. The Tribunal noted Mr McDonald as stating that in this case he would therefore raise this particular matter with the adjudication service who should decide whether this sum would be recoverable.

The Tribunal therefore made a Payment Order against the Respondent for the sum of £1,742.00.

#### 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.

Andrew Mclaughlin

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Legal Member/Chair

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Date

16/11/19

\*Insert or Delete as required