

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)**

Chamber Ref: FTS/HPC/CV/18/3070

**Re: Property at 21 Stoneybank Gardens, Musselburgh, East Lothian, EH21 6TA
("the Property")**

Parties:

**Mrs Victoria Jackson, c/o D J Alexander, 1 Wemyss Place, Edinburgh, EH3
6DH ("the Applicant")**

**Miss Laura Donaldson, Mr Paul Gardiner, 21 Stoneybank Gardens,
Musselburgh, East Lothian, EH21 6TA ("the Respondent")**

Tribunal Members:

Virgil Crawford (Legal Member)

Representation:

**Applicant represented by Mr David Gibb, Messrs DJ Alexander Estate Agents
& Property Managers**

Decision (in absence of the Respondent)

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

BACKGROUND

1. By lease dated 16 April 2018 the Applicant let the Property to the Respondents. The tenancy commenced on the same date;
2. The rent payable was £995.00 per calendar month, payable in advance;
3. An application was made to the Tribunal on 14 November 2018 seeking an order for payment of rent arrears. At that time the amount claimed was £995.00. The application, however, stated that the Applicant was also seeking "any additional balance outstanding due on the date of the hearing";

THE CASE MANAGEMENT DISCUSSION

4. A Case Management Discussion was held on 21 January 2019. The Applicant was represented by Mr David Gibb of DJ Alexander Estate Agents & Property Managers. Neither Respondent attended;
5. The Tribunal was in receipt of certificates from sheriff officers confirming that notification of the application and the place, date and time of the Case Management Discussion had been intimated to each respondent on 3 January 2019. The Tribunal, in terms of Rule 29 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the FTT Rules”), and being satisfied that, in terms of Rule 24 of the FTT Rules that notice of the Case Management Discussion had been given to the Respondents, proceeded in the absence of the Respondents;
6. The Tribunal was advised that the last payment of rent received from the Respondents was on 3 October 2018, covering the period from 16 September 2018 until 15 October 2018. No further payments had been received. The rental payments due on 16 October, 16 November and 16 December 2018, covering the periods until 15 November and 15 December 2018 and 15 January 2019 respectively, were all outstanding. The payment due on 16 January 2019 was also unpaid. The Applicant’s representative also advised that a late payment charge of £12.00 had also been applied to the rent account and this was also outstanding;
7. The Tribunal was advised that the Respondents had told the Applicant that they would vacate the Property on the day of the Case Management Discussion. One of the representative’s property managers had attended at the Property that morning and the Respondents were still in occupation;
8. The Applicant’s representative moved the Tribunal to amend the amount claimed to £3,992.00. Upon being challenged as to how that figure was calculated it was indicated that it was the four monthly payments due to have been paid on 16 October, November and December 2018 and January 2019 – $4 \times £995.00 = £3,980.00$ – plus the late payment charge - £12.00 – taking the amount to £3,992.00;
9. The Tribunal questioned the claim for the £995.00 due on 16 January 2019. This, of course, would cover the period until 15 February 2019. The Tribunal was not willing to make an order for payment of rent which may not, in fact, ultimately be due. The case was calling on 21 January 2019 and, as at the date of the Case Management Discussion, only 6 days rent was due from 16 January 2019 until 21 January 2019 inclusive. The daily rent was £32.71 ($£995.00 \times 12 = £11,940.00 \div 365 = £32.71$). The amount outstanding as at the date of the Case Management Discussion, therefore was £3,193.00, being 3 months and 6 days rent plus the £12.00 late payment charge. The Applicant’s representative agreed with that calculation and moved the Tribunal to amend the amount sought accordingly;
10. The Tribunal, in terms of Rule 13 of the FTT Rules, allowed the amendment and proceeded to make an order for payment in that amount;

FINDINGS IN FACT

11. The Tribunal found the following facts to be established:-

- a) By lease dated 16 April 2018 the Applicant let the Property to the Respondents. The tenancy commenced on the same date;
- b) The rent payable was £995.00 per calendar month, payable in advance;
- c) Rent payments due on 16 October, 16 November and 16 December 2018 were unpaid. The rent payment for the period from 16 January 2019 until 21 January 2019 was unpaid. The total rent outstanding as at 21 January 2019 was £3,181.26;
- d) The lease contained a provision, at clause 37, allowing an additional charge for, amongst other things, any reasonable costs incurred as a result of failure to pay rent on time. The addition of a single charge in the sum of £12.00 was reasonably added to the rent account;
- e) As at 21 January 2019, the total amount due by the Respondents to the Applicant was £3,193.26;

DECISION

The Tribunal granted an order against the Respondents for payment of the sum of **THREE THOUSAND ONE HUNDRED AND NINETY THREE POUNDS AND TWENTY SIX PENCE (£3,193.26) STERLING** to 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.

Virgil Crawford

21 January 2019

Legal Member/Chair

Date