



**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/18/3201

**Re: Property at 43c North High Street, Musselburgh, East Lothian, EH21 6JA
("the Property")**

Parties:

Ms Madeline Smith, 74 New Street, Musselburgh, EH21 6JQ ("the Applicant")

**Mr Craig D A Whyte, 28c Eskside West, Musselburgh, Midlothian, EH21 6PP
("the Respondent")**

Tribunal Members:

John McHugh (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 by the Respondent to the Applicant of the sum of £3320 should be made.

Background

The Applicant is the landlord and the Respondent the tenant under a short assured tenancy agreement dated 22 November 2017. The Appellant seeks an order for payment of outstanding rent of £3870 and late payment charges of £2370.

The Case Management Discussion

A Case Management Discussion took place at George House, Edinburgh on 18 January 2019. The Applicant was represented by Fergus MacMillan, Solicitor.

The Respondent did not attend. The Tribunal had received no communications from the Respondent. Mr MacMillan confirmed that he also was unaware of any contact from the Respondent. The Tribunal was satisfied that notice of the hearing had been

served upon the Respondent by Sheriff Officer and resolved to proceed in the Respondent's absence.

Findings in Fact

The Applicant is the landlord and the Respondent the tenant under a short assured tenancy agreement dated 22 November 2017.

Rent of £3870 is unpaid.

The Applicant has received return of the deposit of £550 from the deposit scheme where it had been held.

Reasons for Decision

The Applicant had originally raised her application for both unpaid rent and for late payment charges. The late payment charges were based upon a formula contained in the tenancy agreement of £10/day. These had reached a significant level compared to the rent arrears.

The Tribunal was concerned that these might constitute a penalty which may not be enforceable and advised that if the Applicant wished to insist upon that aspect of her claim, the Tribunal would require to be addressed on the matter at a Hearing.

The Applicant requested to be allowed to amend her application by removing the element relating to late payment charges. The Applicant's representative also confirmed that she had received return of £550 deposit from the deposit scheme and accordingly that she now only sought an Order for a total of £3320.

Decision

The tribunal decided to issue an Order requiring payment by the Respondent to the Applicant of the sum of £3320.

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.

John Mchugh

John McHugh, Legal Member/Chair

18 January 2019

Date