



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 71 (1) of the Private Housing
(Tenancies) (Scotland) Act 2016**

Chamber Ref: FTS/HPC/PR/21/0935

**Re: Property at 13 Southesk Place, Ferryden, Montrose, DD10 9RL (“the
Property”)**

Parties:

**Mr Wayne Cabrelli, 5 Beach Road Gardens, St Cyrus, Grampian, DD10 0EB
 (“the Applicant”)**

**Mrs Jacquie Clark, UNKNOWN, UNKNOWN (“the Respondent”)
Chamber Ref: FTS/HPC/CV/21/0574**

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision in absence of the Respondent

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that a payment order for the amount of £by the
Respondent to the Applicant should be granted.**

Background and Case Management Discussion

1. The application for an order for payment of rent arrears under S 71 of the Private Housing (Tenancies) (Scotland) Act 2016 arising from a Private Residential Tenancy Agreement between the parties was made by the Applicant on 18 April 2021 initially under reference to rule 80 of the Procedural Rules and amended to showing the correct rule, rule 111 on 27 April 2021. The Application was then accepted on 4 May 2021.
2. The application was for a payment order in the sum £490
3. A Case Management Discussion (CND) was initially scheduled for 21 June 2021, however, service on the Respondent was not successful and after the necessary enquiries Service by Advertisement in terms of rule 6A of the Procedural Rules took place for the Respondent on 3 June 2021.

4. The following documents were lodged to support the application:
 - a. Copy tenancy agreement for the property
 - b. Redacted bank statements of the Applicant for the period of 13 July 2020 to 8 January 2021.
 - c. Handwritten letter from the Respondent to the Applicant dated 7 November 2020.
 - d. email exchange between the parties 5 October, 6 October, 8 November and 9 November 2020
5. The Tribunal was satisfied that the Respondents had the required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.
6. No written representations from the Respondent were received by the Tribunal.
7. The CMD took place on 14 July 2021 by telephone conference call.
8. The Applicant participated. The Respondent made no appearance.
9. The Applicant confirmed that there had been no further contact from the Respondent. The legal member explained the purpose of the CMD and queried the amount stated in the application.
10. The Applicant explained that the tenancy agreement submitted shows that the tenancy commenced on 25 August 2020. The monthly rental as per Clause 7 was payable monthly in advance for the first month on 25 August 2020 and thereafter by agreement on the 7th day of the month. He stated he had discussed this with the Respondent and this suited her. His recollection was that the first payment after the initial rental payment in August would have been due in October.
11. However, when considering the entries in the bank statements submitted the legal member put it to the Applicant that the Respondent had in fact made the next payment after 25 August 2020 on 4 September 2020 and thereafter SDS had released the deposit of £490 to the Applicant on 8 October 2020 covering another rental payment. The Applicant agreed that this meant that the payments covered the following periods: payment on 29 August 2020 covered 25 August 2020 to 25 September 2020, payment on 4 September 2020 covered rent to 25 October 2020 and the deposit released on 8 October 2020 covered the rent to 25 November 2020.
12. The Applicant confirmed that he received notice from the Respondent that the Respondent had left the property in the email of 9 November 2020 and had also found the letter she had left dated 7 November 2020 together with the keys in the property. The letter showed a forwarding address for the Respondent but she had clearly not provided the correct address.
13. The Applicant agreed that the notice period which requires to be given by the tenant in terms of S 49 of the Private Housing (Tenancies) (Scotland) Act 2016 for the tenancy agreement was 28 days. He also agreed that the shortfall of rent would thus have to be calculated pro rata from 25 November 2020 to the end of the said notice period.
14. The 28 day period in this case ends on 7 December 2020 and the Applicant is thus entitled to rent pro rata until that date. This is the payment outstanding and due to him as at the CMD.
15. These are calculated as follows: £490 x 12= £5,880 rent per annum. £5,880 :365 = £16.10 rent per day. £16.10 x 12 = £193.20 for the pro rata rent from 26 November 2020 to 7 December 2020.

Findings in Fact:

1. The property was let on a Private Residential Tenancy Agreement commencing on 25 August 2020
2. The parties were the landlord and tenant of said Tenancy Agreement.
3. The Respondent gave notice by email on 9 November 2020 to the Applicant that she had vacated the property and agreed that rent would be due until the end of the notice period..
4. The monthly rent for the property is £490 payable in advance.
5. The Respondent made two rental payments on 29 August 2020 and 4 September 2020.
6. The Respondent paid a deposit of £490 which was released to the Applicant to cover one month's rent on 8 October 2020.
7. The rent payments and the deposit payment cover the rent due up to 25 November 2020.
8. The notice period for the notice from the Respondent received by the Applicant on 9 November 2020 expires on 7 December 2020.
9. The Applicant is entitled to charge rent for the tenancy until 7 December 2020.
10. A pro rata rental payment for 12 days at a daily rental rate of £16.10 is outstanding. This amounts to the sum of £193.20.

Reasons for Decision:

1. The Tribunal considered that the material facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

2. However, in terms of Rule 18 of the Rules of Procedure:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i)correcting; or

(ii)reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

3. The documents lodged are referred to for their terms and held to be incorporated herein.

4. The Respondent had fair notice of the representations of the Applicant forming the reasons for the application and has not challenged these. The Tribunal did not consider that there was any need for a hearing as the Respondent has not made any representations and thus the facts of the case are not in dispute.

5. The Tribunal makes the decision on the basis of the documents lodged by the Applicant and the information provided by the Applicant at the CMD.

6. The Tribunal is thus satisfied that the Respondent had entered into a Private Residential Tenancy Agreement with the Applicant for the property with a monthly rental charge of £490. The payments shown in the bank statement covered the rent for the property up to 25 November 2020. The Applicant was entitled to receive rent until the end of the tenancy. The tenancy came to an end on 7 December 2020 when the 28 day notice period for a notice given by the Respondent on 9 November 2020 expired. The Applicant was entitled to pro rata rent for 12 days at the rate of £16.10. Rent arrears of £192.20 had accrued by the end of the tenancy period. These remain outstanding at the date of the CMD. No time to pay application had been submitted.

9. The Applicant is entitled to a payment order for the sum of £193.20 for the rent arrears as calculated above.

Decision:

The Tribunal grants the order for payment of the amount of £193.20 by the Respondent 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.

**Petra Hennig McFatridge
Legal Member/Chair**

**14 July 2021
Date**