

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) under Section 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/25/1313

Re: Property at 16 Factory Road, Kirkcaldy, KY1 2NJ (“the Property”)

Parties:

Mr Graham Cuthill Executor of the late Joy Young, 3 Marine Parade, Saltburn-by-the-sea, North Yorkshire, TS12 1DP (“the Applicant”)

Mr Bogdan Swider, 16 Factory Road, Kirkcaldy, KY1 2NJ (“the Respondent”)

Tribunal Members:

Serena Weir (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order be made against the Respondent for payment to the Applicant of the sum of SIX THOUSAND AND SIX HUNDRED POUNDS (£6,600) STERLING with interest thereon at the rate of 4 per cent per year running from the date of the decision of the First-tier Tribunal to grant this order, being 30 June 2026, until payment.

Background

1. The Applicant submitted an application under Rule 70 of the Housing and Property Chamber Procedure Regulations 2017 (“**the Rules**”) for an order for payment against the Respondent in respect of rent arrears which are said to have accrued (the “**Application**”).
2. The Application was accompanied by a copy of the tenancy agreement, rent statements and paperwork confirming the appointment of the Applicant as the executor of the landlord.

Case Management Discussion

3. A Case Management Discussion (“**CMD**”) was fixed for 12 September 2025. The Application, supporting papers and details of the date, time and location of the CMD were served on the Respondent by Sheriff Officer.
4. The note from the CMD records that the Tribunal formed the view that the Respondent was asserting that:-
 - 4.1. The sum claimed for rent was excessive, and failed to take account of payments made;

- 4.2. The Property was in disrepair, not habitable and rent was being withheld; and
- 4.3. The Property being in disrepair, and the landlord accordingly being in breach of contract, rent as claimed is not due.
5. Following on from the CMD, on 17 September 2026, a direction was issued to the Respondent. In that direction, the Respondent was ordered to provide written representations setting out, in clear terms, his proposed defence to the Application. The Respondent was ordered to comply with that direction by 07 November 2025. No such written representations were received from the Respondent.

Evidential Hearing

6. The Application called for an evidential hearing on 30 June 2026 in person. Notice of the date, time and location of the evidential hearing had been competently served on the Respondent by Sheriff Officers on 03 June 2026. The Applicant was represented at the evidential hearing by Mr Gardiner of Lindsays solicitors. There was no appearance at the evidential hearing by or on behalf of the Respondent. The Tribunal delayed the start of the evidential hearing by 10 minutes to allow the Respondent an opportunity to attend. The Tribunal's clerk attempted to contact the Respondent by telephone using the telephone number which the Tribunal had for the Respondent. A recorded message stated that it was not possible to connect the telephone call. The Tribunal was satisfied that the requirements of rule 24(2) of the Rules regarding the giving of reasonable notice of the date and time of an evidential hearing had been duly complied with. The Tribunal therefore decided to proceed in the absence of the Respondent.
7. On 10 March 2026, the Applicant's representative wrote to the Tribunal with an updated rent statement noting that the arrears at that stage were £6,600. On 16 June 2026, the Applicant's representative wrote again to the Tribunal with an updated rent statement noting that the arrears were presently £7,950. That correspondence was not copied to the Respondent by the Applicant's representative. The Tribunal explained that there was a procedure for an Applicant if he wished to amend the sum sought in his Application. The Tribunal explained that this involved the Applicant requesting to amend their application and notice of this being given to the Tribunal and the Respondent at least 14 days before the date of the evidential hearing. The Tribunal explained that this procedure had not been followed. It was explained to the Applicant that he could rely on the original figure as set out in the Application as amended in March 2026 or seek to amend the Application but that meant that a decision would not be made on the Application today. The Applicant confirmed that he wanted to carry on with the Application and the original figure as set out in the Application as amended in March 2026.
8. Having heard from the Applicant's representative and considered the Application, supporting papers, written submissions and the whole facts and circumstances of the case, the Tribunal made the following findings in fact.

Findings in Fact

9. The late Mrs Young was the owner and landlord of the Property.
10. Mrs Young and the Respondent entered into a tenancy agreement dated 09 May 2014 in terms of which Mrs Young let the Property to the Respondent.
11. The tenancy agreement was a short assured tenancy in terms of the Housing (Scotland) Act 1988.
12. The rent due in respect of the tenancy agreement was £450 per calendar month payable on the first day of each month.

13. The Applicant has been appointed as the executor of Mrs Young following her death.
14. The Respondent had failed to make payment of the full amount of the rent from December 2024 onwards.
15. The Respondent has accrued rent arrears of £6,600. Appropriate accounting had been provided to the Tribunal. These sums remain owed to the Applicant by the Respondent.

Reasons for Decision

16. In reaching their decision, the Tribunal had regard to the terms of section 16 of the Housing (Scotland) Act 2014 which provides as follows:-

“The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal—

...

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988.”

17. Accordingly, the Tribunal has jurisdiction in relation to claims by landlords for payment of unpaid rent against a tenant in respect of a short assured tenancy.
18. The Tribunal gave careful consideration to all of the background papers including the Application, the written submissions and oral representations at the evidential hearing by the Applicant's representative.
19. The Tribunal found that the Application was in order.
20. The Tribunal had no material before it to contradict the Applicant's position nor advance any argument on behalf of the Respondent or seek time to pay. The Respondent had not submitted any representations to the Tribunal and nor did he attend the evidential hearing. The Tribunal was accordingly satisfied that, on the balance of probabilities, the sum of £6,600 was due to the Applicant and had not been paid by the Respondent.
21. The Tribunal was satisfied that it could make relevant findings in fact in order to reach a decision at the evidential hearing, and that to do so would not be contrary to the interests of the parties in this case. The Respondent was given the opportunity to attend the evidential hearing but did not participate. The Tribunal therefore considered it could accept the evidence and submissions on behalf of the Applicant, there being no contradictory evidence before it.
22. The Tribunal was satisfied that the Respondent had a contractual obligation to pay rent of £450 per month. The Respondent had failed to comply with his obligation in this regard, resulting in arrears of £6,600 being due. The Respondent has not sought to dispute this.
23. Having made the above findings in fact, the Tribunal grants the Application.

Decision

24. The Tribunal grants an order for payment by the Respondent to the Applicant for the sum of SIX THOUSAND AND SIX HUNDRED POUNDS (£6,600) STERLING with interest thereon at the rate of 4 per cent per year running from the date of the decision of the First-tier Tribunal to grant this order, being 30 June 2026, until payment.

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.

30 June 2026

Legal Member/Chair

Serena Weir

Date