



**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/19/0429**

**Re: Property at Flat 2/2, 856 Pollokshaws Road, Glasgow, G41 2BQ (“the  
Property”)**

**Parties:**

**York & District Investment Company, c/o 1008 Pollokshaws Road, Shawlands,  
Glasgow, G41 2HG (“the Applicant”)**

**Miss Kirstin Beaton formerly residing at 3 Bayfield Mains, Nigg, Tain, Ross-  
Shire, IV19 1QW and present whereabouts unknown (“the First Respondent”)  
and Mr Stephen Kelly, formerly residing at Flat 2/2 856 Pollockshaws Road,  
Glasgow and present whereabouts unknown (“the Second Respondent”)  
jointly and severally.**

**Tribunal Members:**

**Melanie Barbour (Legal Member), Tony Cain (Ordinary Member) Richard Mills  
(Reviewer)**

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

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

**Background**

1. An application was made to 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 (“the 2017 Rules”) seeking an order for payment of the sum of £8250 to the Applicant in relation to rent arrears due by the Respondents.
2. The application contained:-

- a copy of the tenancy agreement,
  - a copy of the rent statement, and
  - a copy of email correspondence between the letting agent and respondent.
3. The Applicant's agent, Ms McAtier from Messrs Miller Samuel Hill Brown LLP appeared. Neither Respondent was in attendance. There was also no attendance by the First Respondent's representative, Ian Beaton.
  4. There had been a case management discussion on 5 April 2019 reference is made to the case management discussion note; and to the Direction produced at the hearing. At that hearing the Applicant had requested that there be service by advertisement on the Respondents.
  5. The Applicant had lodged further documents in compliance with the Direction.
  6. Notice of the Hearing had been made on the Respondents by service by Advertisement between 15 April and 16 May 2019. Reference is made to the Certificate of Service by Advertisement. As the Tribunal was satisfied that there had been Service by Advertisement on both of the respondents we were prepared to proceed with today's hearing in their absence.

#### Hearing

7. The Applicants' agent referred us to the papers which had been lodged in support of the application, including the tenancy agreement, and rent account statement. The Agent advised that the arrears were still outstanding and there had been no payments towards the arrears since the application had been made.
8. The Agent submitted that the Respondents had failed to make regular rental payments since March 2016. She advised that the Respondents had previously indicated that there were repairs outstanding to the property and they were withholding rent. She advised that the Letting Agent had carried out the repairs notified. The Applicant disputes that the Respondent's had been entitled to withhold rent and in any event, should have repaid it once the repairs had been completed. She advised that it was not accepted that the rent should have been withheld. She advised that the Letting Agents had attempted to engage with the Respondents in order to get the rent repaid however the money was not forthcoming. Given the level of arrears the Applicant now sought an order for payment of the rent arrears as set out in the application.
9. The Applicants' Agent advised that the rent arrears were still outstanding as at today's date. There had been no further payments towards the rent arrears by the Respondent other than as set out in the rental statement lodged by the Applicant. Arrears of £8250 were due.

10. The Agent also asked that interest at the judicial rate be awarded in favour of the Applicant, she referred me to rule 41A of the Tribunal Rules. She referred to *Farstad Supply AS v Enviroco Ltd 2013 SLT 421*; and *NHBC v Scot Hogarth Homes and others 2019 CSOH 7* in support of interest being awarded and at a rate of 8% per annum; she submitted that if 8% was considered to be too high, then in terms of the principle of compensation she considered that 4% was reasonable having regard to the disadvantage that the Applicant had been put to given that he would have been able to invest the rental income had it been paid.
11. The Agent also moved for expenses to be awarded against the Respondents, she submitted that the conduct of the Respondents in respect of the efforts that had been made to get them to pay the rent had been time consuming; and also they had not adhered to the Direction and not attended the case management discussion and confirmed their position in relation to the rent arrears; she submitted that this had added to the costs of the Applicant in this case.

#### Findings in Fact

12. The Tribunal found the following facts to be established:
13. A tenancy agreement was entered into between the Applicant and the Respondents for the Property and existed between the parties. It was entered into on 5 February 2015.
14. The tenancy agreement provided that rent was £550 per month. The first rental payment was due on the 5 February 2015.
15. That the rental statement showed amounts due each month, amounts received, and rent outstanding.
16. That the rental statement showed total rent arrears outstanding as at 4 June 2017 being £8250.
17. That it appeared that there had been no payments towards the rent arrears other than those shown on the rent statement.

#### Reasons for Decision

18. Section 16 of the Housing (Scotland) Act 2014 provides that the First Tier Tribunal has jurisdiction in relation to civil matters arising from assured tenancies.
19. As this tenancy is an assured tenancy we are content that we have jurisdiction to deal with this case.

20. The tenancy agreement created obligations between the parties, one of those obligations was to pay rent, and the Respondents have failed to do so. There was submitted a rental statement showing the arrears due and information provided today by the Applicant was that there had been no further payments towards the rent arrears and the sum still outstanding was £8250.
21. There was reference by the Applicant's Agent to rent being withheld in relation to repairs to the property, however it was their position that these repairs had been completed and the rent should have been paid on completion of the repairs. They also rejected the idea that rent should have in any event been withheld. The Respondents did not appear today and have not put forward any defence as to why they did not pay the rent.
22. On the basis of the evidence submitted and having regard to all papers submitted including the application, we consider that we should make an order for the sum sued for.
23. We do not intend to award interest in this case at the judicial rate or a lower one. An award of interest is discretionary. The cases referred to were in relation to commercial actions and therefore not on all fours with this case. It does not appear to us to be reasonable to award interest in this case as there had been reference to repairs needing to be carried out and it appears that at one time the Applicant was prepared to wait for the rent until such time as the repairs had been done. Accordingly, having regard to the compensatory principle, and to the very low bank rates which exist, we do not consider that it would be appropriate to award interest in this case.
24. We also do not consider that it would be appropriate to award expenses in this matter. Expenses are dealt with in Rule 40 of the Tribunal Rules where it is set out that expenses may be awarded where the behaviour of a party in the conduct of a case has put the other party to unnecessary or unreasonable expense, given that the Respondents have not entered any appearance in this case, we do not consider that it would be competent to award expenses.

### Decision

25. The Tribunal grants an order in favour of the Applicant for EIGHT THOUSAND TWO HUNDRED AND FIFTY POUNDS (£8,250.00) STERLING against the Respondents.

### **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.

Melanie Barbour

Legal Member/Chair

17. 5. 19

Date