



**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/22/3795**

**Re: Property at Flat 2/1, 1020 Crow Road, Glasgow, G13 1JN (“the Property”)**

**Parties:**

**Mrs Catherine McGovern, 47 Roman Road, Bearsden, Glasgow, G61 2QP (“the Applicant”)**

**Ms Jill Bryceland, UNKNOWN, UNKNOWN (“the Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted in favour of the Applicant in the sum of £3773 with interest thereon at the rate of 4% per annum above the base lending rate of the Bank of Scotland.**

**Background**

1. This is an application dated 14<sup>th</sup> October 2022 and made in terms of Rule 70 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (‘the Rules’). The Applicant is the landlord of the Property, and the Respondent was the tenant, in terms of a short assured tenancy agreement that commenced on 13<sup>th</sup> June 2016 at an agreed rent per month of £580. The Applicant is seeking an order for payment in respect of rent arrears in the sum of £3773 with interest thereon at the rate of 4% per annum above the base lending rate of the Bank of Scotland.
2. The Applicant’s representative lodged a copy of the short assured tenancy agreement, bank statements, a rent statement and copies of communications between the parties.
3. Service of the application and notification of a Case Management Discussion was served upon the Respondent’s solicitor by Sheriff Officers on 26<sup>th</sup> January 2023.

## The Case Management Discussion

4. A Case Management Discussion (“CMD”) took place by telephone conference on 6<sup>th</sup> March 2023. Neither party was in attendance. The Applicant was represented by Mr Vincent McGovern. The Respondent was represented by Mr Jack Smith, Solicitor.
5. Mr McGovern referred to the application which sets out the basis for the claim. Rent was unpaid for three years and the Respondent has not denied this or submitted written representations. The Respondent left the Property on 23<sup>rd</sup> December 2022, giving only 72 hours’ notice. It is the Applicant’s position that there is an ongoing rent liability, as the tenancy was not brought to an end, but no application has been made to increase the sum sought at this stage.
6. Mr Smith said the Respondent does not dispute that there are arrears. It is her position that she twice paid the rent in cash, once in the first year of the tenancy and once in 2018. She is unsure if that is included in the rent statement. The Respondent does not consider that the tenancy continued by tacit relocation as there was no tenancy agreement in place. Mr Smith said the matter should proceed to a hearing or a further CMD.
7. Responding to questions from the Tribunal as to the basis for a hearing, when the sum before the Tribunal does not appear to include any disputed rent, Mr Smith said the dispute would be over the matter of whether or not the tenancy continued after the Respondent left the Property.
8. Mr McGovern said if payment had been made in cash, which was not his practice, the cash would have been receipted. Mr McGovern moved for an order for payment in the sum sought, pointing out that the Respondent had stated the sum due in June 2019, which was after the two claims of cash payments. She had never raised any issue during her communications with the Applicant’s representative in respect of the sum claimed being incorrect. She has been in arrears for three and a half years and has produced nothing to dispute the sums due.
9. The Tribunal allowed a short adjournment to Mr Smith to take instructions from the Respondent regarding the matter of the cash payments and whether any further information was available in this regard. Mr Smith was unable to make contact with the Respondent. Mr Smith mentioned that a further application had been made in respect of damage to the Property and it may be worth conjoining both applications.
10. Mr McGovern said the application in respect of damage had just been accepted by the Housing and Property Chamber but no CMD had been scheduled. He saw no point in conjoining the cases, as there was no overlap, and the damage had been vouched for to the last penny. There have been discussions between the representatives, but there is unlikely to be any settlement in this regard.

11. Mr Smith mentioned that the Respondent may make a claim for unlawful eviction, which may be conjoined with the damage claim in due course.

### **Findings in Fact and Law**

12.

- i. Parties entered into a short assured tenancy agreement in respect of the Property commencing on 13<sup>th</sup> June 2016 at an agreed rent per month of £580.
- ii. The Respondent left the Property on or around 23<sup>rd</sup> December 2022.
- iii. Rent lawfully due in terms of the tenancy agreement has not been paid by the Respondent.
- iv. The Applicant is entitled to recover rent lawfully due.
- v. In terms of the tenancy agreement, interest is due on outstanding rental payments at the rate of 4% per annum above the base lending rate of the Bank of Scotland.

### **Reasons for Decision**

13. The Respondent has failed to make payment of rent lawfully due. The Applicant is entitled to recover rent lawfully due in terms of the tenancy agreement between the parties, with interest thereon.

14. The Tribunal considered that the Respondent had put no defence forward in respect of the sum sought, and appeared throughout extensive discussions with the Applicant over a period of more than three years, as shown in the communications lodged, to accept the sums were due. The sum of £3773 has been outstanding since July 2019.

### **Decision**

15. An order for payment is granted in favour of the Applicant in the sum of £3773 with interest thereon at the contractual rate of 4% per annum above the base lending rate of the Bank of Scotland from the date of making the decision.

### **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.**

**Helen Forbes**

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**Legal Member/Chair**

**6<sup>th</sup> March 2023**  
**Date**