

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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/18/1415**

**Re: Property at 29 Dalmarnock Drive, Glasgow, G40 4LN ("the Property")**

**Parties:**

**Mr Qasim Hanif, 567 Cathcart Road, Govanhill, Glasgow, G42 8SG ("the Applicant")**

**Mr Muhammad Jawad Hafeez, Ms Humaira Jawad, 23 Dalmarnock Drive, Glasgow, G40 4LN ("the Respondent")**

**Tribunal Members:**

**Alison Kelly (Legal Member)**

**Background**

This is a continued case management discussion, the initial one having taken place on 17<sup>th</sup> August 2018. The previous CMD was continued as the First Named Respondent was personally present and sought an adjournment to allow him to seek legal advice and possibly legal representation, and to allow him to obtain his solicitor's papers to substantiate his position.

**The Case Management Discussion**

Miss Baxter of Mellicks, Solicitors appeared on behalf of the applicant, as she had done at the previous hearing.

Mr Upadhyay of Norman Lawson and Co, Solicitors represented the Respondents. None of the parties were present.

The Convenor began by explaining the purposes of a Case management Discussion in terms of Rule 17 of the tribunal Rules, and also explained that the rule gave her the power to make a decision at the end of the hearing.



The Convenor asked Mr Upadhyay if he had seen the note of the previous Case management Discussion. He did not appear to know that there was a note.

Miss Baxter was asked to present the Applicant's position. She said that following the previous CMD she had emailed the First Respondent direct. She had told him that the Applicant was prepared to amend the sum sought and to credit him with a further payment of £450, which he said he'd made at the commencement of the tenancy. She had also confirmed that another £950 would be deducted from the sum as this money had been paid by the Respondents to their previous solicitors, LSA, and has now been passed on. She had received no response to this email. She was seeking an order for payment in the amount of £17,950.

She also moved to amend the Respondents' address to 23 Dalmarnock Drive, Glasgow, G40 4LN, and there was no objection to this on behalf of the Respondents.

Mr Upadhyay was asked to present the Respondents' position. He started by saying that the Applicant's landlord registration had actually been revoked by Glasgow City Council, it had not lapsed. He had, in the file from the previous solicitors, LSA, correspondence from them to the Respondents to the effect that the property had been repossessed and his position was that, as the property had been repossessed it was no longer in the ownership of the Applicant and he was not entitled to be paid rent. He said that there was no continuous tenancy.

It should be noted that Mr Upadhyay had not brought any copies of the documents which he wished to refer to. When asked by the Convenor how much his clients thought they were due to pay he could not give an answer. He seemed to be under the impression that the case was about eviction as well as rent arrears.

Miss Baxter was asked for comment on the letter Mr Upadhyay referred to. She expressed her disappointment that Mr Upadhyay had made no contact with her prior to the hearing to discuss any of the points he was now making, or to inform her that he was representing the respondents. She had not acted for the Applicant in the early years of the tenancy. She understood that the lender threatened to repossess the property but had then given the Applicant some leeway and were bearing with him while he tried to recover the arrears. She pointed out that the eviction order had been granted when that case called before the First-tier Tribunal on 17<sup>th</sup> August 2018, and the only matter before the Tribunal today was that of the rent arrears.

Mr Upadhyay then stated that the Respondents should not have to pay rent as the Applicant didn't own the property after a possession order had been granted. He produced a copy of a decree from Glasgow Sheriff Court from 2014. He did not provide the Tribunal or Miss Baxter with a copy. He said that a new tenancy agreement should have been constituted, and that the Respondents withheld rent on the advice of their previous solicitor.

Miss Baxter advised that she thought that Mr Upadhyay was confused about the legal position. She said that the presence of a decree for possession of the property did not transfer title to the lender; it could be used as a link in title in any sale, but did not constitute change of ownership. She said that the legal position was clear. The Respondents had continued to live in the property and rent is due. She said that the



LSA had raised an action of eviction in late 2015 on the grounds of rent arrears. Unfortunately the tenancy agreement had not stated that rent arrears could be a Ground for eviction and the action was therefore not competent. At that time the arrears had been in the region of £4500. The Applicant had then changed solicitors and the eviction case was brought before the First-tier tribunal on the grounds that the tenancy had reached its end.

The Convener asked Mr Upadhyay to sum up his position, and he agreed it was as follows:

1. It is clear that after the property was repossessed the tenancy was a statutory regulated tenancy rather than a short assured tenancy
2. The amount due in relation to rent is disputed as the Applicant had not been in possession of the property and was not entitled to the rent claimed
3. The Respondents have made an application for backdated housing benefit.

He still could not state how much the respondents thought that they did owe.

Miss Baxter countered by saying that any change in the nature of the tenancy, if there was one, did not alter the obligation on the Respondents to pay rent as they had continued to occupy the property.

### **Findings in Fact**

1. The respondents had occupied the property from the commencement of the lease, 1<sup>st</sup> June 2014, until 1<sup>st</sup> June 2018.
2. There was an obligation in the lease to pay rent of £450 per month.
3. The Respondents had not paid any rent between 1<sup>st</sup> August 2014 and the end of the tenancy, apart from two months when they paid the rent to the LSA in 2017, which was then transferred to the Applicant.
4. The Applicant was not entitled to rental payments between 21<sup>st</sup> September 2017 and 8<sup>th</sup> January 2018 as he was not a registered landlord during this period.
5. The lender did not take possession of the property.

### **Reasons for Decision**

The Tribunal did not accept the argument on behalf of the respondent that rent was not due because a possession decree had been granted. The lender did not take possession of the property. The existing lease remained in force. The respondents, by their own admission made payments towards rent in late 2017. By these payments they accepted rent was due.



## Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment in the amount of £17,950 should be made.

## 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.

**Alison Kelly**

Legal Member/Chair

28/9/18

Date