

**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/22/2652**

**Re: Property at Flat 1/1, 73 Strathblane Gardens, Glasgow, G13 1BL (“the  
Property”)**

**Parties:**

**Places for People Homes Limited, 2 Crescent Office Park, Clarks Way, Bath, BA2  
2AF (“the Applicant”)**

**Brian McKernan, Flat 1/1, 73 Strathblane Gardens, Glasgow, G13 1BL (“the  
Respondent”)**

**Tribunal Members:**

**Joel Conn (Legal Member) and Eileen Shand (Ordinary Member)**

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

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

1. This is an application by the Applicant for civil proceedings in relation to an assured tenancy in terms of rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”), namely an order for payment of rent arrears. The tenancy in question was a Short Assured Tenancy of the Property by the Applicant to the Respondent dated 25 July 2013.
2. The application was dated 2 August 2022 and lodged with the Tribunal that day. The application was accompanied with a rent statement showing arrears to 31 July 2022 of “£6,765 or other such sum as is due as at the date of any hearing to follow hereon”. The said arrears of £6,765 developed since 13 August 2021 when the last payment was made. The monthly rent was said to be £615 (since March 2019) having been validly increased from the original amount in the Tenancy of £550. The rent was due in advance on the 1<sup>st</sup> of each month.

## The Hearing

3. On 10 November 2022 at 10:00, at a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting remotely by telephone conference call, we were addressed by the Applicant’s agent, Kenneth Caldwell, solicitor, of Patten & Prentice. As of 10:05, there was no appearance by the Respondent (that is, neither he nor anyone on his behalf had dialled in).
4. Prior to the CMD, email correspondence had been sent to the Tribunal on 4 November 2022 on the Respondent’s behalf by a Social Care Worker from Glasgow City Health and Social Care Partnership (whom we shall refer to as S). S explained that the Respondent was currently living in respite care and the Respondent was satisfied to see the eviction order (sought in two conjoined applications) made against him. A response was sent to S asking for the Respondent’s position on this application on arrears. S responded on 9 November 2022 with some further information on the Respondent’s financial issues but we did not receive any defence (or consent) in regard to the order sought in this application.
5. The Applicant’s agent confirmed that S had been in touch with his office since 4 October 2022 (being when the papers were served at the Property) and S had similarly commented that the Respondent did not intend to return to the Property and that, similarly, he has not received any material response from S on the arrears application though he took it that there was an acceptance by the Respondent that there were substantial arrears.
6. We were thus satisfied that there was no appearance by the Respondent but that the emails (and prior contact between S and the Applicant’s agent) explained the reason for non-attendance. In the circumstances, we were satisfied to consider the application in full at the CMD in the absence of the Respondent.
7. In regard to the content of the emails from S, the relevant details for this application were:
  - S first became involved in April 2022, following concerns about the Respondent’s health raised by the Respondent’s GP.
  - The Respondent was in receipt of benefits but had not at April 2022 applied for the housing benefit element of Universal Credit.
  - Due to the health issues, the Respondent was now in a “place of safety” where assessments could occur.
  - The Respondent had no desire to return to the Property.The Applicant’s agent confirmed that this was all consistent with what S had told him.
8. The Applicant’s agent provided an updated rent statement, showing arrears to the period ending 30 November 2022 now amounted to £9,225. This had been recently emailed to the email address for the Respondent but we noted that the terms of the application had highlighted that the Applicant would seek any sum due in arrears as at the date of the CMD. Thus the Respondent already had fair notice that an order may be issued in a higher sum.

9. The Applicant's agent confirmed that, to the best of his knowledge, all rent increases would have been properly administered by the Applicant's letting agents, and the Respondent had paid all increased rental up until August 2021 when payments ceased. No payment had been made against rent since a payment on 13 August 2021 clearing the arrears as of that date. There were now 15 months unpaid rent.
10. We noted there was a contractual rate of interest in the Tenancy Agreement, but the Applicant's agent confirmed that no interest was sought, in consideration of the circumstances and large arrears which would need recovered in any case. No order for expenses was sought.

### **Findings in Fact**

11. By written lease dated 25 July 2013 the parties agreed a lease with a start date of 25 July 2013 until 24 January 2014 "and after that on a Calendar Monthly basis" ("the Tenancy").
12. Under the Tenancy, the Respondent was to make payment of £550 per month in rent in advance to the Applicant on the 1st of each month.
13. The Applicant had increased the rent using the appropriate procedures and the rent was increased to £615 per month by 1 March 2019.
14. As of 31 July 2022, there was unpaid rent of £6,765 due by the Respondent to the Applicant in terms of the Tenancy in respect of missed payments for rent covering the period 1 September 2021 to 31 July 2022 (being 11 months of rent).
15. On 2 August 2022, the Applicant raised proceedings for an order for outstanding rent due of "£6,765 or other such sum as is due as at the date of any hearing to follow hereon".
16. The balance of rent due by the Respondent to the Applicant as at 10 November 2022 is £9,225 due by the Respondent to the Applicant in terms of the Tenancy in respect of missed payments for rent covering the period 1 September 2021 to 30 November 2022 (being 15 months of rent).
17. A Sheriff Officer acting on the instructions of the Tribunal served the application and intimation of the CMD upon the Respondent on 4 October 2022.
18. The Respondent provided no evidence of payment of any part of the said unpaid rent due to 30 November 2022 of £9,225.

### **Reasons for Decision**

19. The application was in terms of rule 70, being an order for civil proceedings in relation to assured tenancies. We were satisfied, on the basis of the application and supporting papers, and further rental statement, that rent arrears in the figure

of £9,225 was outstanding for the period to 30 November 2022 and were thus outstanding at the date of the CMD. In all the circumstances, we were thus satisfied that the necessary level of evidence for such civil proceedings on the sum of £9,225 had been provided and no defence or dispute was made by the Respondent against this figure.

20. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal and we were satisfied to make a decision at the CMD to award the sum of £9,225 against the Respondent.
21. We note that this sum related to rent due to 30 November 2022 and the Applicant thus reserves its position in regard to any further claim under the lease against the Respondent.

### **Decision**

22. In all the circumstances, we were satisfied to make the decision to grant an order against the Respondent for payment of the sum of £9,225 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.**

# Joel Conn

**10 November 2022**

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**Legal Member/Chair**

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**Date**