



**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/23/4262**

**Re: Property at 3/2 47 Cochrane Street, Paisley, PA1 1JZ (“the Property”)**

**Parties:**

**Mr Asvin Jayamoorthy, Mr Srikara Bodi, 16 Argyle Street, Paisley, PA1 2EX; Room N.203, Block A, Andrew Ure Hall, Glasgow, G1 1PU (“the Applicant”)**

**Goenka Property Group, 25 Daisy Street, Govanhill, Glasgow, G42 8JN (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be made.**

**Background**

1. The Applicants lodged an application on 29<sup>th</sup> November 2023 under Rule 87 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) It is an application to recover an alleged unlawful premium under Section 88 of the Rent (Scotland) Act 1984.
2. Lodged with the Application were:
  - a. What’s App messages
  - b. Copy Bank statement showing payment of the sum
3. The Application was served on the Respondent by Sheriff Officer on 9<sup>th</sup> May 2024.

## **Case Management Discussion**

4. The Case Management Discussion (“CMD”) took place by teleconference. The Applicant was represented by Miss Cook of Strathclyde Law Clinic. The Respondent did not attend and was not represented.
5. The Chairperson confirmed the purposes of a CMD in terms of Rule 17 of the Rules.
6. The Chairperson also considered Rule 29 and decided that the Respondent had received the notice required by Rule 24(1) and that the Case Management Discussion should proceed in the absence of the Respondent.
7. Miss Cook made a submission on behalf of the Applicants. She said that they had paid the sum of £1325 to the respondent on 15<sup>th</sup> March 2023 to hold the property at 3/2 47 Cochrane Street, Paisley, PA1 1JZ for them. They did not sign a lease. The Applicants changed their minds the next day as they had heard from others about the landlord’s practices. They requested return of the money. The Respondent refused to repay it. Miss Cook submitted that in terms of the Rent (Scotland) Act 1984 that this was an illegal premium. She also referred to a previously decided case, FTS/HPC/PR/21/3082, which she said was in similar terms, and in which the payment had been held to be an illegal premium. She sought return of the money.

## **Findings in Fact**

- i. The Applicants paid the Respondent the sum of £1325 by bank transfer on 15<sup>th</sup> March 2023 to secure the property at 3/2 47 Cochrane Street, Paisley, PA1 1JZ;
- ii. The Applicants did not sign a lease;
- iii. The Applicants decided that they did not want to rent the property;
- iv. The applicants asked the respondent to refund their money;
- v. The Respondent did not refund their money.

## **Reasons for Decision**

8. Section 90 (1) of the Rent (Scotland) Act 1984 provides a definition of premium as follows:

*premium means any fine, sum or pecuniary consideration, other than the rent, and includes any service or administration fee or charge;*

Section 82 of the Act states;

**82. Prohibition of premiums and loans on grant of protected tenancies.**

*(1) Any person who, as a condition of the grant, renewal or continuance of a protected tenancy, requires the payment of any premium or the making of any loan (whether secured or unsecured) shall be guilty of an offence under this section.*

*(2) Any person who, in connection with the grant, renewal or continuance of a protected tenancy, receives any premium shall be guilty of an offence under this section.*

*(3) A person guilty of an offence under this section shall be liable to a fine not exceeding level 3 on the standard scale.*

*(4) The court by which a person is convicted of an offence under this section relating to requiring or receiving any premium may order the amount of the premium to be repaid to the person by whom it was paid.*

Section 88 of the 1984 Act states:

**88. Recovery of premiums and loans unlawfully required or received.**

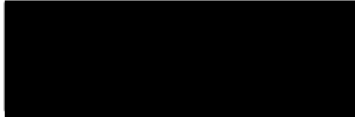
*(1) Where under any agreement (whether made before or after 12th August 1971) any premium is paid after 12th August 1971 and the whole or any part of that premium could not lawfully be required or received under the preceding provisions of this Part of this Act, the amount of the premium or, as the case may be, so much of it as could not lawfully be required or received, shall be recoverable by the person by whom it was paid.*

*(2) Nothing in section 82 or 83 above shall invalidate any agreement for the making of a loan or any security issued in pursuance of such an agreement but, notwithstanding anything in the agreement for the loan, any sum lent in circumstances involving a contravention of either of those sections shall be repayable to the lender on demand.*

9. The money paid by the Applicant to the Respondent falls within the Section 90(1) definition of a premium. It is a sum or pecuniary consideration other than rent. Section 82 prohibits such premiums and section 88 makes such a premium recoverable.

## **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.**



**Legal Member/Chair**

**13/06/2024**

**Date**