



**Decision with Statement of Reasons of 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, as amended (“the Regulations”)**

**Chamber Ref: FTS/HPC/CV/23/3341**

**Re: Property at 35 Lomond Place, Condorrat, G67 4JW (“the Property”)**

**Parties:**

**Mr Scott James Mann, 26 Watson Avenue, Rutherglen, G73 2NL (“the Applicant”)**

**Miss Lisa Gallagher, 108 Glencalder Crescent, Bellshill, ML4 2LU (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member) and Ann Moore (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment by the Respondent in the sum of £3,545.58 should be made in favour of the Applicant.**

**Background**

1. The application submitted on 21 September 2023 sought a payment order against the Respondent in the sum of £8,000 (subsequently reduced to £7,215.61) in respect of rent arrears owing in respect of her former tenancy of the Property which had commenced in 2015 and ended around October 2022. Supporting documentation was submitted, including numerous bank statements, a spreadsheet showing payments owed and received and numerous messages between the parties. The Applicant was unable to provide a copy of the tenancy agreement but stated that the monthly rent was £450.

2. Following initial procedure and the lodging of further representations and documentation by the Applicant, the application was accepted on 28 November 2023 and a Case Management Discussion (“CMD”) was fixed to take place on 11 March 2024 at 2pm.
3. Both parties lodged written representations and documentary evidence prior to the CMD.

#### **Case Management Discussion – 11 March 2024 (Legal Member only)**

4. The CMD took place by telephone conference call on 11 March 2024 at 2pm. It was attended by the Applicant, the Respondent, the Respondent’s representative, Ms Emily Gallagher from University of Strathclyde Law Clinic and Mr Scott Gillanders, also from the Law Clinic, in the capacity of observer only.
5. A detailed discussion took place, following which the Legal Member adjourned the application to an Evidential Hearing and issued a Direction, directing the Applicant to lodge certain documentation to clarify his claim. The Applicant complied with the Direction and lodged the requested documentation on 11 April 2024. This was circulated to the Tribunal Members and the Respondent’s representative on 24 April 2024.
6. An Evidential Hearing was subsequently fixed to take place on 18 July 2024 by video-conference and parties notified accordingly.
7. On 11 July 2024, late representations and documentation were lodged on behalf of the Respondent. These were not circulated to the Tribunal Members or Applicant until the morning of the Evidential Hearing, at around 10am.

#### **Evidential Hearing – 18 July 2024 – Adjourned (both Tribunal Members)**

8. The Evidential Hearing commenced shortly after 10am on 18 July 2024. Both parties were in attendance. The Applicant was accompanied by a work colleague, Ms Connelly, in a supportive capacity only. The Respondent was again represented by Ms Emily Gallagher from University of Strathclyde Law Clinic and Mr Scott Gillanders, also from the Law Clinic, was also in attendance in the capacity of observer only.
9. Following introductions and introductory comments, the Legal Member explained regarding the late submissions from the Respondent and that they had only just been circulated. The Applicant indicated that he had not received them but subsequently confirmed that they had now arrived with him, at 10.12am. The Legal Member gave the Applicant the option to commence the Evidential Hearing at 10.30am, to give both the Applicant and the Tribunal Members an opportunity to consider the late submissions, or to adjourn to another date. The Respondent’s representative had no objection to this and

provided an explanation for the late submissions, indicating also that much of the content had been lodged previously. There was, however, a change in the Respondent's position as to the figure she accepts is owing (now £1,208.99, reduced from the figure of £1,650 which was stated at the CMD). The Applicant confirmed that this was not acceptable to him and that the minimum he would accept is £3,000, although he still considers the figure owing to be higher than that (£3,415.61 was the updated figure he had stated at the CMD, although it had been noted by the Tribunal Members that the figure showing in the subsequent documentation lodged by the Applicant in response to the Direction had been £3,545.58).

10. There was some further discussion and the Respondent's representative confirmed that she had just noted an error in some of the figures contained in their late submissions. The Legal Member verbally directed the Respondent's representative to lodge amended submissions as soon as possible and she confirmed she would do so immediately. The Legal Member then verbally directed the Applicant that, once he receives the amended submissions, he should go through the figures and evidence produced by the Respondent and cross-reference these against his own figures and then advise the Tribunal if there is any change in his position as to the figure outstanding. The Applicant confirmed he would do so.
11. There was some discussion about dates to avoid for the fresh Evidential Hearing and the Legal Member indicated that, in the circumstances, the Tribunal would endeavour to identify as early a date as possible. Parties were thanked for their attendance and the proceedings brought to a close.
12. The Evidential Hearing was adjourned, for parties to lodge further written representations/submissions meantime, to a further Evidential Hearing to take place by video-conference call on 26 September 2024. Parties were advised accordingly.
13. Later on 18 July 2024, by email, the Respondent's representative lodged a slightly amended version of the documentation they had submitted on 11 July 2024. This contained their updated written submissions on behalf of the Applicant who maintained that only the sum of £1,284.99 was owed to the Applicant, together with some supporting documentation. This was circulated to the Applicant.
14. On 10 August 2024, by email, the Applicant lodged updated written submissions, answering those of the Respondent, together with some supporting documentation. He maintained that the Respondent owes him the sum of £3,545.58. This was circulated to the Respondent's representative on 16 August 2024.
15. No further documentation was lodged by either party prior to the Evidential Hearing.

## **Evidential Hearing – 26 September 2024 (both Tribunal Members)**

1. The Evidential Hearing took place by video-conference call on 26 September 2024, commencing at 10am. Both parties were in attendance. The Applicant was accompanied by Ms Giblin who was attending in a supportive capacity only. The Respondent was again represented by Ms Emily Gallagher from University of Strathclyde Law Clinic. Mr Scott Gillanders, also from the Law Clinic, was also in attendance in the capacity of observer only.
2. Following introductions and introductory comments, the Legal Member summarised the background to the case and confirmed that both parties had received the documentation lodged by the other party following the adjournment of the previous Evidential Hearing on 18 July 2024. It was established that there was no change in either party's position and that both were ready to proceed. Neither party had any additional witnesses that they intended to lead evidence from. The Legal Member explained the procedure which would be followed.

### **Applicant's Evidence**

3. Mr Scott James Mann confirmed that he was 49 years old and a business owner. He was the landlord of the tenancy with the Respondent which lasted from 11 January 2015 until 5 October 2022. The tenancy ended by mutual agreement. The Respondent had admitted some time ago, in messages which he has lodged, the money owed to him for rent arrears but yet has made no payments to him towards the debt. He tried to reach agreement with her for a long time and was in contact several times with the Law Clinic who were acting on behalf of the Respondent. However, there was no resolution and he therefore proceeded with this Tribunal application.
4. Mr Mann referred to his most recent written representations and supporting documentation, which were lodged on 10 August 2024, in response to the most recent written representations lodged on behalf of the Respondent. He also referred to the colour-coded rent statement spreadsheet and other supporting documentation he had lodged at the outset and on 11 April 2024, in response to the Tribunal's Direction issued after the CMD. In relation to the spreadsheet, he confirmed that the green entries show rent payments made, the red entries show rent payments missed and the orange entries show additional/extra payments made by the Respondent.
5. As to January 2015, when the tenancy started, Mr Mann stated that no payments were made by the Respondent, either in cash or by bank transfer. He stated that he met the Respondent and her mother at the Property to let the Respondent view the Property before the tenancy started but, after that, he did not meet the Respondent in person again until around a year later, so he does not know when the cash payment that the Respondent claims to have made could have taken place. No proof has been produced by the Respondent, such as bank statements from December 2014/January 2015. Mr Mann confirmed that he had agreed with the Respondent at the outset that there would be two

months' rent paid up front and no deposit taken. However, he said that he subsequently just decided to let this go as the Respondent was having some difficulties getting the money together. He referred to having had discussions with a (male) mutual family friend who had vouched for the Respondent. He had subsequently decided to just charge the Respondent an apportioned amount of monthly rent for January 2015, given that the tenancy did not start until 11 January 2015. This is shown on the spreadsheet as £310.59, being the pro rata amount due for January 2015. Mr Mann denied that any deposit was paid by the Respondent.

6. As to payments in 2020, Mr Mann pointed out that there were six rent payments missed that year, as shown in his spreadsheet, but that only two have been mentioned in the Respondent's representations. The first of these which the Respondent claims to have made on 25 August 2020 was not received into his bank account and he referred to his bank statement produced with his papers on 10 August 2024 which verified this. He confirmed that he only had one bank account into which the Respondent paid rent. He stated that all the Respondent has produced is a screenshot of an apparent payment made to him of £450 on 25 August 2020. He maintained that this is not proof that the payment was made or that the money had actually left the Respondent's bank account as she has not produced a full, transparent bank statement showing this. He also referred to the limited information on the screenshot, which shows no detail of the account it is coming from or the account it was being paid into. There are no sort codes or account numbers shown. He explained that, even if the Respondent had attempted to make the transfer, if there were, for example, insufficient funds in her account then her bank would not make the payment. Mr Mann made similar submissions regarding the second payment the Respondent had claimed to have made of £450 on 6 October 2020 and, again, referred to the bank statement he had lodged as evidence that this sum was not received into his bank account.
7. In 2021, Mr Mann stated that the Respondent missed four rent payments, again as shown in his spreadsheet. He confirmed that the Respondent had made two payments of £600 each in July 2021 but denied that he had only allocated one of these. He explained that the payment made on 3 July 2021 was allocated in his rent spreadsheet to the rent due for July 2021. The second payment made on 28 July 2021 was allocated to August 2021, as shown. As to the further payment of £600 that the Respondent claims to have made on 27 August 2021, again, this was not received by him. He again referred to the fact that the Respondent has not provided a bank statement showing this payment, just another screenshot of a single transaction with no further details shown.
8. At the end of the tenancy, Mr Mann confirmed that he had similarly apportioned the amount due for the final month of October 2022, as the tenancy had ended on 5 October 2022. The figure stated in the spreadsheet was £73.97. Although Mr Mann had stated that the tenancy had ended by mutual agreement, the Respondent had not given him advance notice that she was moving out. However, she had left the flat in good order. As he denied that the Respondent had paid him upfront either for advance rent or by way of a deposit at the

commencement of the tenancy, he maintained that she was due to pay the apportioned amount claimed for the last month of the tenancy.

9. The Legal Member made reference to the last entry on the spreadsheet which Mr Mann has shown as £244.99 paid by the Respondent in respect of a “washing machine”. He explained that, during the tenancy, the Respondent had required to purchase a new washing machine which he had accepted that he was responsible for replacing, as the landlord, so he had agreed that her rent due could be reduced by this same amount.
  
10. Ms Gallagher then cross-examined Mr Mann on behalf of the Respondent. She referred him to the screenshots of messages between the parties before the tenancy commenced (page 18 of Respondent’s Inventory of Productions) and asked him to confirm that there were messages there where he specifically mentioned requiring two months’ rent up front, yet he had not included the two payments of £450 made in January 2015 in his spreadsheet (page 14 of Inventory). Mr Mann reiterated what he had said in his evidence earlier, that he had not received any bank transfer or cash payment from the Respondent in January 2015 and that, although he had originally intended to take two months’ rent up front, he had ended up not doing this. He does not know anything about the Respondent borrowing cash from her grandmother, as stated in one of her messages. He referred to the fact that the Respondent has not provided any proof of this. No bank statement has been produced by her and not even a screenshot of an alleged transaction. Mr Mann reiterated that he had only met with the Respondent and her mother once around that time, to let her view the flat, and that no cash had been paid to him on that occasion. She and her mother had seemed very nice. He referred to his evidence produced of all the messages where he was chasing payment from the Respondent at the start of the tenancy and that she gave him all sorts of excuses about waiting for her bursary money coming through, etc. Mr Mann reiterated that he had spoken to a mutual family friend at the time who had persuaded him to give the Respondent the benefit of the doubt. Mr Mann confirmed the friend was male but declined to give his name as he has not checked with him that he would be happy with this being disclosed. He maintained that the Respondent would know who he is talking about (although she had earlier denied this). Mr Mann was asked regarding the end of the tenancy (page 13 of Inventory) and if it was not the fact that the Respondent should not have had to make any payment for the last month of the tenancy, given the upfront payments made at the outset Mr Mann denied this and reiterated that there had been no upfront payments made by the Respondent and that she had instead been in arrears from the outset, as shown in his spreadsheet.
  
11. Ms Gallagher then referred to the two payments the Respondent had produced screenshots of two entries from 25 August and 6 October 2020 (pages 7 and 8 of Inventory). Mr Mann reiterated that these printouts do not prove anything, whereas he has produced copies of full statements covering those months which show that neither of these were received by him. Reference was made by the Legal Member to the Respondent’s screenshots and asked why the October screenshot (page 8) appears on its own and does not form part of the

list of screenshots from 2020 (page 7). [The Respondent clarified at this point that she had two accounts from which payments were made to the Applicant, the main account from which most payments were made and her student account from which the October payment was made. She stated that her student account is now closed and that she had therefore been unable to access fuller statements from it.]

12. Ms Gallagher then asked Mr Mann about the two July 2021 payments of £600 and the further payment made by the Respondent of £450 on 27 August 2021 (pages 9 and 10 of Inventory), and the fact that Mr Mann had only credited two of these three payments in his spreadsheet. Mr Mann reiterated his position that he had credited one of the £600 July 2021 payments to July, the other to August and that he had not received the alleged 27 August 2021 payment.

### **Respondent's Evidence**

13. Ms Lisa Gallagher (referred to throughout as "the Respondent" to avoid confusion with Ms Emily Gallagher, her representative), then gave evidence. She stated that she had paid two months' rent upfront and had required to borrow money from a female relative to pay half of this in cash. She referred to the text messages between she and Mr Mann confirming this. Her position is that she paid £450 in cash to Mr Mann on 15 December 2014 and made the further £450 payment by bank transfer, from her student account. She conceded that she has not produced any evidence of this transfer from her bank account, even in the form of a screenshot. The Ordinary Member asked the Respondent if she had obtained a receipt from Mr Mann in respect of the cash payment. The Respondent said she had not, explaining that she was 20 years old at the time. She was naïve and had not signed anything. She stated that she had had to ask Mr Mann for a tenancy agreement to show in relation to her student bursary and he had just produced a blank document to be filled in. He did not deal with things in a formal way. The Respondent denied that it had been her mother who had accompanied her to the flat and explained that she has not had a relationship with her mother for around 15 years. It was a female friend she had with her at the time but she was not prepared to become involved and attend as a witness on behalf of the Respondent. The Legal Member asked if the female relative from whom the Respondent said she had had to borrow money was her grandmother, as stated in the text messages produced, to which the Respondent answered that it was not her actual grandmother, just someone she referred to as such.
14. The Respondent explained that the reason she had had difficulty paying the rent during the lockdown years was because she newly had her own business as a photographer and she could not work much because so much of her job was face to face. Nor did she qualify for furlough payments because the business was so new. She confirmed that she had explained the position to Mr Mann at the time and that he had been very understanding. She maintained that she had, however, made more payments than Mr Mann has included in his spreadsheet. She referred to the screenshot transactions from her bank accounts which had been produced and referred to earlier, showing payments

she made during 2020 and 2021 which Mr Mann denies receiving. The Respondent cannot explain why these payments do not appear in the bank statements Mr Mann has produced. The Respondent explained that she and her representatives had had to go through years of records covering the whole period of the tenancy from 2015 to 2022 when Mr Mann produced his list of payments he said she had missed. She stated that she did not have much confidence in his figures because the sum claimed had changed several times and had reduced so much from the original figure claimed and he admitted having missed lots of payments. She had produced proof of a number of additional payments which Mr Mann is still claiming not to have received.

15. The Legal Member asked the Respondent why she had not lodged full bank statements, in the way Mr Mann had. She responded that she did not wish to lodge all that personal detail for Mr Mann to see. The Respondent was informed that she could have lodged redacted bank statements, just leaving in the essential information, as is commonly done in Tribunal and Court proceedings. She replied that she could perhaps do that if she was given more time but only in relation to her main bank account. As she had said, her student account is now closed and she is unable to recover bank statements from that account. She had been able to recover the single transaction screenshots from messages/screenshots she had sent to Mr Mann previously on Facebook Messenger. The Legal Member stated that the Respondent and her representatives had already been given every opportunity to lodge whatever evidence they wished to in support of the Respondent's position and it is for the Tribunal at the Evidential Hearing to assess the strength of that evidence and weigh it against the evidence produced by the other party. The Legal Member asked the Respondent if she had checked her own bank statements to make sure that payments which she thought she had made, but which Mr Mann disputed and had produced bank statements in support, had in fact been made, with the money actually leaving her bank account. The Respondent confirmed that she had checked the transactions online.
16. The Ordinary Member stated that it had been clear throughout this case that there were disputed transactions and, given that the Applicant had lodged full bank statements relating to the periods in question, it should have been apparent to the Respondent and her representatives that they should consider doing the same as there were several discrepancies to be explained. Ms Gallagher explained that, although she is representing the Respondent, she is a student and not legally qualified. She accordingly sought advice from a supervisor in the Law Clinic and it was decided that it was easier to go through all the bank transactions and lodge proof of the transactions in this way. She conceded that, in retrospect, it may have been better to have the Respondent obtain full bank statements and to lodge these.
17. Mr Mann was then asked if he wished to ask the Respondent any questions. He asked if the Respondent had looked at her actual bank statements. The Respondent reiterated that she had looked at her statements online on her banking app.



18. The Ordinary Member clarified that the Respondent was being asked if she had simply relied on screenshots or entries showing individual transactions on her online banking app or if she had looked at the actual monthly bank statements for the relevant periods which are downloadable from online banking. The Respondent stated that she had not downloaded or checked full statements.

### **Summing-up**

19. Mr Mann stated that he felt that he had proved his case. He has lodged full transparent bank statements and it can all be seen there in black and white.

20. The Respondent stated that she had not had a lot of money at the relevant time and would have noticed if she was not making rent payments and there was more money in her bank accounts than there should have been.

21. Ms Gallagher stated that there was correspondence lodged supporting the Respondent's position that she required to pay two months' rent upfront and that the Respondent's evidence supported her position that the full sum claimed by the Applicant was not due.

### **Time to Pay**

22. The Legal Member explained that, given the Respondent's position that there were some sums owing to the Applicant and that she had stated that she would wish to enter into an instalment payment arrangement with the Applicant, the Tribunal would also like to hear from both parties on this issue.

23. The Respondent confirmed that she did not wish to give full information regarding her income and expenditure to the Applicant, as it is personal information, but that she would provide it to the Tribunal. The Legal Member explained regarding the completion of a Time to Pay Application and that the process necessarily involved the Applicant receiving a copy of the application and being given an opportunity to comment on it and respond to any payment offer made. The Respondent did not wish to pursue that route. She agreed, however, to provide some basic details. She confirmed that she was 32 years old and a self-employed photographer. She lives alone and rents a property. However, she is currently on disability benefits and is also twenty weeks pregnant. She has no savings or other debt. However, given her present circumstances, the most she could afford would be about £30 per month.

24. Mr Mann said that the Respondent had previously offered to pay £100 per month but he had refused that because he did not think it was reasonable given the length of time the money had been owed. He referred to the fact that the Respondent had not paid anything to him for all this time, even although she admitted that money was owing. However, he was happy just to leave it up to the Tribunal to decide.

25. The Legal Member brought the Evidential Hearing to a close, thanked parties and Ms Gallagher, for their preparation for, and presentation of, their cases and confirmed that the Tribunal Members would now deliberate and issue their Written Decision in due course.

### **Findings in Fact/Reasons for Decision**

1. The Applicant was the owner and landlord of the Property.
2. The Respondent was the tenant of the Property from 11 January 2015 until 5 October 2022.
3. Neither party had provided a copy of a tenancy agreement to the Tribunal.
4. It appeared that the tenancy was originally set up on a fairly informal basis, the parties having a mutual friend or acquaintance.
5. Given the commencement date of the tenancy, it was accepted that this was an Assured Tenancy, governed by the terms of the Housing (Scotland) Act 1988.
6. The rent was £450 per calendar month throughout the tenancy.
7. Prior to the commencement of the tenancy, it was agreed between the parties that the Respondent would pay two months' rent upfront and that the Applicant would not take a deposit.
8. The Respondent had difficulties with her finances and the Applicant decided to allow the tenancy to commence without receiving the agreed two month's rent (£900) upfront.
9. The Applicant charged a pro-rata amount of the monthly rent due for the first and last months of the tenancy in his calculations of the overall amount due from the Respondent in respect of rent arrears.
10. The Respondent appears to have vacated the Property without giving advance notice to the Applicant but he opted not to charge her additional rent in lieu of notice.
11. The tenancy ended by mutual agreement.
12. In addition to the rent arrears owing from the first month of the tenancy, rent payments were missed in 2016, 2020 and 2021.
13. At the end of the tenancy, rent arrears had accrued to £3,545.58, the amount now claimed by the Applicant.

14. The Applicant initially submitted this Tribunal application, seeking a payment order in the sum of £8,000 in respect of rent arrears but the amount sought was subsequently adjusted several times to the sum of £3,545.58 now claimed.
15. There were numerous communications between the parties during the tenancy in respect of rent payments missed and delayed and the rent arrears owing.
16. The Respondent admitted some of the arrears, and experiencing financial difficulties, in these communications with the Applicant, and subsequently.
17. The rent arrears admitted as owing by the Respondent has also been adjusted several times and currently amounts to the sum of £1,284.99.
18. Rent arrears amounting to £3,545.58 are due and owing by the Respondent to the Applicant.
19. The Respondent has been called upon to make payment to the Applicant but has failed or at least delayed to do so.
20. The Respondent has made offers to the Applicant to pay the amount she admits is owing by way of monthly instalments but these offers were refused by the Applicant on the basis of the amount owing and the length of time the debt has been owing.
21. The Respondent is now requesting time to pay at the rate of £30 per month in view of her present circumstances.

### **Reasons for Decision**

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, the extensive written representations and documentary evidence lodged by both parties and all the oral evidence and submissions heard at the Evidential Hearing.
2. It was apparent from the application papers and discussions at the CMD on 11 March 2024 that there was a long history behind this application and that there had been attempts by the Applicant to try and resolve things at an earlier stage. It appeared that the Applicant had initially sought to bring a payment action against the Respondent in the Small Claims Court, which was the wrong jurisdiction for this type of dispute. The Respondent had been represented by the Law Clinic for some time and there had been negotiations between the Applicant and the Law Clinic in relation to the earlier action mentioned but the rent arrears figure owing could not be agreed. It was conceded by the Applicant that his initial calculations had been wrong and that he had missed payments which had been made by the Respondent, such that he significantly reduced the sum he was seeking during the Tribunal process.

3. However, the Applicant had complied with the Direction made by the Legal Member following the CMD in March 2024 which required him to clarify his figures and lodge a rent statement in a format that was easier to follow. He did so on 11 April 2024 and lodged documentation, including the colour-coded rent statement spreadsheet mentioned above and referred to frequently during the Evidential Hearing. The Tribunal considered that this set out clearly the payments the Applicant claimed not to have received and his calculation of the total sum owing. This was circulated to the Respondent's representative on 24 April 2024. However, their response to this was not lodged with the Tribunal until 11 July 2024, a week before the Evidential Hearing was due to take place on 18 July 2024, and late in terms of the Tribunal's Direction requiring further documentation to be lodged at least 14 days prior to the Evidential Hearing. This was compounded by the Tribunal Administration, due to administrative oversight, not circulating this documentation until the morning of the hearing, as a consequence of which the Evidential Hearing had to be postponed. The response on behalf of the Respondent had an Inventory of Productions attached which was said to include various "bank statements" but which actually contained a number of extracts/copy screenshots of online banking transactions which were said in their representations to constitute evidence of payments made from the Respondent's bank account to the Applicant on various dates, which he was claiming not to have received. On 18 July 2024, the Tribunal verbally directed the Respondent to lodge an amended version of their representations as, during the discussions, the Respondent's representative had noted an error in some of their figures. The Applicant was also directed to go through the amended documentation to be lodged by the Respondent, cross-reference against his own figures, and advise the Tribunal thereafter if there was any change in his position. The Respondent's amended representations were lodged later on 18 July 2024 and circulated to the Applicant, who responded on 10 August 2024, confirming there was no further change to his figures. He explained his own position regarding each of the points made by the Respondent, commented on the evidence lodged in support of the Respondent's position and lodged some additional bank statements from his own bank account in support of his position. This was circulated to the Respondent's representative on 16 August 2024. No further response was submitted on behalf of the Respondent prior to the Evidential Hearing.
4. At the Evidential Hearing, the Tribunal had heard oral evidence from both parties on their respective positions regarding the various 'disputed' payments, scrutinised the documentary evidence produced by each and asked both parties a number of questions to further clarify their positions. Having done so, the Tribunal's view was that the Applicant's position was substantiated by the documentary evidence he had produced, particularly the full bank statements relating to the periods in question, but also the numerous copy messages between the parties over the course of the tenancy. The Tribunal considered that this evidence outweighed the evidence lodged on behalf of the Respondent. The Respondent was relying on extracts/screenshots from online banking as proof of the fact that various payments had been made to the Applicant on various dates, which payments he was claiming not to have received. As was stated by the Applicant, it was noted by the Tribunal that no

bank account details were contained in these extracts, either of payer or payee, nor was there any context. The Tribunal considered that these extracts/screenshots only showed a 'snapshot in time' and, whilst they may be evidence that the Respondent had instructed payments on particular dates to the Applicant, they did not establish that payments had actually been made to him. Given that the Applicant had lodged full statements showing that payments had not been received into his bank account around those dates, the Tribunal was of the view that the Respondent's evidence was not sufficient to counter that. The Respondent had been unable to offer any explanation as to why the Applicant's statements did not show the payments she was claiming to have made. The Respondent and her representative had offered explanation as to why she had not lodged full statements from her own bank accounts but, on being questioned further on the issue, the Respondent had conceded that she had not even downloaded any full bank statements to double-check against the individual transaction summaries she had obtained via her banking app. In view of the background to this application and the apparent uncertainty over the Applicant's initial calculations and paperwork, the Tribunal considered it to be understandable for the Respondent to state that she did not have much confidence in the Applicant's figures. In the Tribunal's view, however, it should have been apparent to the Respondent and her representative that stronger evidence would be required in order to counter the Applicant's position, especially after he lodged further bank statements on 10 August 2024 in direct response to their updated representations.

5. Accordingly, the Tribunal was satisfied that the Applicant had established that he had not received the payments the Respondent claimed to have made on 25 August and 6 October 2020 (both £450), and also on 27 August 2021 (£600). It had also been noted by the Tribunal that there had been messages between the parties at the time regarding the alleged payment on 27 August 2021, with the Applicant advising that he had checked his bank and the payment had not been received.
6. The Tribunal was also satisfied from the Applicant's oral evidence, and with reference to his spreadsheet, that he had not 'missed' one of the July 2021 payments (£600) but had instead allocated one to the July rent and the other to the August rent for 2021.
7. As to the disputed position of the parties regarding arrangements at the commencement of the tenancy, the Tribunal noted that there was no evidence before it from the Respondent that any payment had been made to the Applicant, either by bank transfer or cash. The Tribunal took into account the copy messages from December 2014 lodged by the Respondent in which the Applicant stated that he required two months' rent upfront and the Respondent stating that she intended to borrow cash from her grandmother and pay him half in cash and half by bank transfer at a later date. It was, however, noted that the Applicant did not specifically respond to that message and that the Respondent did not lodge any extract/screenshot in evidence in respect of the payment by bank transfer of £450 that she claims to have paid to the Applicant in January 2015. The Applicant denied having received any cash payment from

the Respondent and had also offered a credible explanation as to why he had ended up not insisting on the two months' rent being paid prior to commencement of the tenancy. The Tribunal had regard to the copy messages lodged by the Applicant which were numerous and spanned much of the duration of the tenancy. In particular, the Tribunal noted that, in the early months of the tenancy, there were several instances of the Applicant messaging the Respondent about rent payments being missed and payments she stated would make, or had been made, not arriving in his bank account and of the Respondent apologising and offering various excuses for non-payment. This pattern of communication appeared to persist throughout the tenancy. The Tribunal considered that these messages lent weight to the Applicant's evidence and, on balance, were satisfied that the Applicant had been entitled to charge a pro-rata amount of rent for the months of both January 2015 and October 2022, being the first and last months of the tenancy.

8. In summary and with reference to its Findings-in-Fact above, the Tribunal was satisfied that the Applicant's claim against the Respondent was well-founded and had been established in evidence. The Tribunal found him consistent in his evidence throughout and credible. Whilst the Tribunal considered the Respondent's evidence to be weaker than that of the Applicant overall, the Tribunal did not consider that the Respondent was being dishonest in her evidence regarding the payments she had claimed to have made. The Tribunal believed that the Respondent had instructed transfer of funds to the Applicant on some of the dates claimed but that, for whatever reason, the payments were not actually made by her bank. She had relied on what were essentially 'pending' transactions, retrieved from her online banking app, rather than scrutinising her full bank statements or lodging comprehensive information with the Tribunal to prove her position that the money had left her account and been paid to the Applicant. The Tribunal also considered that the passage of time had played a part, as the Respondent herself stated that it was hard to remember all the details going back to the commencement of the tenancy in 2015. It was also unfortunate that there was no written tenancy agreement in place and that the tenancy was initially set up and operated thereafter in a relatively informal way. It appeared that the Applicant had not issued formal or regular rent statements to the Respondent during the tenancy, which had likely contributed to difficulties for the parties in keeping track of the rent arrears position at the time.
9. The Tribunal concluded that, in all the circumstances, the Applicant was entitled to a payment order against the Respondent in the sum of £3,545.58.
10. The Tribunal considered the Respondent's offer to pay whatever sum was due at the rate of £30 per month. Although the Respondent was not prepared to provide full details of her income and expenditure, she did provide brief details of her present personal and financial circumstances and the Tribunal noted that she was on a limited income and likely to have a change in her personal circumstances in the coming months. However, given the amount owed; the length of time the debt had been outstanding; the fact that the Respondent had not endeavoured to pay anything towards the arrears since October 2022 when

the tenancy ended, despite admitting that a significant proportion of the Applicant's claim was owing; and the length of time it would take for the amount due to be repaid at the rate of £30 per month, the Tribunal decided to refuse the Respondent's time to pay request and simply make a payment order for the full sum owing.

## **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.**

# Nicola Weir

Legal Member/Chair

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**26 September 2024**  
**Date**