



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/23/4087

Re: Property at 10K Craufurdland Road, Kilmarnock, KA3 2HT (“the Property”)

Parties:

Mr David Cavanagh, 12 Union Street, New Mills, KA16 9AZ (“the Applicant”)

Mr Mariusz Biniak and Mrs Katarzyna Wit Biniak, 10K Craufurdland Road, Kilmarnock, KA3 2HT (“the Respondents”)

Tribunal Members:

Shirley Evans (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment against the Respondents in favour of the Applicants in the sum of SEVEN THOUSAND FOUR HUNDRED AND FIFTY-ONE POUNDS (£7451) STERLING. The order for payment will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondents.

Background

1. This is an action for recovery of rent arrears raised in terms of Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
2. The application was accompanied by a copy of a tenancy agreement dated 18 and 19 October 2016 between the Applicant and the Respondents, an AT5 dated 17 October 2015, letters to the Respondents in English and Polish dated 18 and 26 October 2023 and 3 November 2023, post office receipts dated 26 October 2023 and 3 November 2023, Royal Mail Track and Trace receipts dated 27 October 2023 and 6 November 2023, a rent statement and bank statements. The Applicant subsequently emailed the

Tribunal with a rent statement to the 18 July 2024 showing arrears of £7451 and an email dated 4 January 2024 from PCKwikFix advising the Respondents' email address no longer existed.

3. The Tribunal proceeded with a Case Management Discussion ("CMD") on 29 July 2024 by way of teleconference. The Applicant appeared and represented himself. He was supported by his colleague Alison Patterson. There was no appearance by or on behalf of the Respondents despite the teleconference starting 5 minutes late. The Tribunal was satisfied the Respondents had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in their absence. The case was heard with an application for eviction under reference FTS/HPC/EV/24/4084.
4. After hearing submissions from the Applicant, the Tribunal granted an order for payment in favour of the Applicant in the sum of £7451. The decision was thereafter issued to the parties.
5. On 29 August 2024 and 2 September 2024, the Tribunal received emails from Mr Biniak sent from two separate email addresses requesting *"reinstatement of the time limit for filing a letter of reconsideration"*. These emails were accompanied by letters for various medical appointments from 5 July -7 August 2024 and a number of Statements of Fitness for Work for Social Security or Statutory Sick Pay dated 24 May – 19 August 2024. Thereafter the Tribunal requested whether the medical letters could be crossed over to the Applicant.
6. On 6 September 2024 the Tribunal received a further two emails, one from Mr Biniak and the other from a non- named party both stating they were *"confidential/treat as confidential"*. The emails were in the exact same terms and appeared to be requesting an extension of time to lodge an appeal. These emails contained a number of allegations of harrassment against the Applicant and the Applicant's letting agent and an explanation for Mr Biniak's failure to appear at the CMD on 29 July 2024 when he stated he was in hospital following *"an accident through the sole fault of Mr David Cavannah(sic)"*. He stated the arrears were *"false and fraudulent"* with reference to bank statements and a rent book which he did not enclose and which he stated showed the Respondents had overpaid the rent. He attached an accident and emergency report from Crosshouse Hospital dated 23 October 2023, a victim care card dated 31 October 2023 from Police Scotland, an appointment letter dated 26 August 2024 from the Universal Credit Health Assessment Advisory Service, a Statement of Fitness for Work for Social Security or Statutory Sick Pay dated 30 July 2024, a letter from NHS Ayrshire and Arran dated 2 September 2024 for an outpatient appointment in a nurse led clinic and a proof of recorded delivery to the Tribunal dated 28 June 2024. This appeared to relate to the return of the application papers to the Tribunal by either Mr or Mrs Biniak. The emails stated that they had not received the application papers in a language they understood and that they were entitled to have these papers in Polish.

7. On 8 September 2024 the Tribunal received three emails from a non-named party using Mr Biniak's email address. Two of these were marked "*Confidential*".
8. On 9 September 2024 the Tribunal acknowledged receipt of the emails of 29 August, 2 and 6 September 2024 and sought clarification as to whether Mr Biniak sought a recall of the decisions of 29 July 2024 or leave to appeal. The Tribunal advised that in either case the Tribunal was willing to grant an extension of time for the lodging of either a request for recall or leave to appeal by no later than 23 September 2024. The Tribunal also advised it could only accept emails from a named party and could not accept emails from non-named parties unless a named party had authorised that person to contact the Tribunal. The Tribunal also suggested that Mr Biniak seek independent legal advice. A copy of this email was sent to the Applicant.
9. On 9 September 2024 the Tribunal received an email from Mr Biniak advising he did not consent to the medical letters being passed to the Applicant. On 9 September 2024 Mr Biniak also sent a further email to the Tribunal repeating the request for an extension of time to lodge an appeal and the allegations of harrassment etc against the Applicant and the Applicant's letting agent contained in his email of 6 September 2024. Mr Biniak attached a copy of the Notice to Quit dated 5 July 2023 and the same documents sent with his email of 6 September 2024.
10. On 9 September 2024 Mr Biniak acknowledged receipt of the Tribunal's email of 9 September 2024 and enquired as to whether the Orders were on hold. The Tribunal confirmed the Orders were on hold until 23 September 2024.
11. On 17 September 2024 the Tribunal received an email from a non-named party sent from Mr Biniak's email address. This stated that the person was looking for an "*extension of the time-limit and a request for the service of the case file in Polish*".
12. On 19 September 2024 the Tribunal received a further email from the same non-named party. Attached to this email was a "*Proposal for a New Deadline of 110 days to Lodge an Appeal or Request for Cassation(sic)*". This "*Proposal*" purported to be in the name of Mr Biniak and referred to Article 6 of the Human Rights Act 1998 and the Victims and Witnesses (Scotland) Act 2014. This "*Proposal*" sought a further 110 days beyond 23 September 2024 to lodge an appeal or cessation and founded on the inability to obtain legal representation or Legal Aid despite approaching 200 law firms. Attached were some responses from solicitors unable to assist Mr Biniak. This email made the same allegations against the Applicant and his letting agent as previously and claimed that witnesses including expert witnesses such as accountants had to prepare the case and that they would come from Scotland and from Poland to give evidence on behalf of Mr Biniak. It requested time to "*Allocate sufficient time (110 days) to review the case file in Polish, prepare bank evidence to prove lack of debt, prepare a*

list of witnesses; so as to balance the odds against the slanderer". It also referred to medical appointments Mr Biniak had on 25 September, 1 and 20 October 2024. Although mention was made of Mrs Biniak it was unclear whether this "*Proposal*" was also made on her behalf. There was a request for the papers and the decisions to be translated into Polish and served on each of the Respondents separately. This email was marked "*Confidential*".

13. The "*Proposal*" sent on 19 September 2024 was again sent on 20 September from Mr Biniak's email address. The email was marked "*Confidential*".
14. On 23 September 2024 the Tribunal acknowledged receipt of the emails of 17, 19 and 20 September 2024.
15. On 23 September 2024 Mr Biniak emailed the Tribunal three times to advise he had been granted Legal Aid and requested "*that your application be granted*". This request was however prepared by the same non-named party and requested an extension of time from 23 September 2024 to "*lodge an appeal or a withdrawal of the decision*" due to a "*force majeure*" being the September weekend of 20-23 September 2024. He advised that Mr Biniak was being represented by Ayr Housing Aid Centre SCIO and was due to consult with them the following day. An email in the same terms was sent to the Tribunal on 24 September 2024. All emails were marked as "*Confidential*".
16. On 24 September 2024 the Tribunal acknowledged receipt of the emails of 17, 23 and 24 September 2024 and again pointed out it could not correspond with a non-named person. The Tribunal also advised that it was prepared to extend the time to lodge an appeal or a recall to close of business on 4 October 2024.
17. On 25 September 2024 the Tribunal received a "*Request for Support for an Elderly Disabled Person*". This was sent from Mr Biniak's email address and was signed off, but not signed by a non-named party and Mr Biniak. This requested the papers be translated into Polish, that Legal Aid be granted, that "*special resources*" be provided to assist Mr Biniak in preparing his case and a TV link be provided. This claimed Mr Biniak was disabled and "*the syndrome of diseases acquired during the 2020 period, permanently prevents independent access to the legal system. Loss of mobility in communication prevents independent movement for distances greater than 20 meters.*" The loss of mobility it was claimed was as a result of hate crimes against Mr Biniak by the Applicant, a third party and the Applicant's letting agents. It included the letter of 7 August 2024 originally sent with the emails of 29 August and 2 September 2024 relating to a medical appointment on 25 September 2024 and a letter from Universal Credit dated 23 September 2024 stating Mr Biniak had limited capability for work, a victim care card dated 31 October 2023 from Police Scotland which had been sent originally on 6 September 2024 and a victim report care card dated 5 September 2024 from Police Scotland. This email was marked "*Confidential*".

18. On 29 September 2024 the same non-named person sent a further email from Mr Biniak's email address with a "*Durable Power of Attorney*" in favour of Gerry Tierney, Advocay and Advice Worket from Ayr Housing Aid Centre SCIO. This included emails between the non-named party and Ayr Housing Aid Centre and a copy of what appeared to be a Polish identity card for Mr Biniak. This email was marked as "*Confidential*".
19. On 2 October 2024 the Tribunal acknowledged receipt of the emails of 25 and 29 September 2024.
20. On 3 October 2024 the Applicant emailed the Tribunal looking for an update and advising he was under some stress and anxiety due to not hearing from the Tribunal.
21. On 3 October 2024 the same non-named party emailed the Tribunal from Mr Biniak's email address stating Mr Biniak was being represented by Ayr Housing Aid Service and had met with them on 2 October 2024. This email was marked as "*Confidential*".
22. Further on 3 October 2024 the Tribunal received a request for recall of the decisions of 29 July 2024 from Ayr Housing Aid Service. The application for recall stated Mr Biniak had received the application papers in English only which presented difficulties in his understanding and that he had been ill, hence he had not attended the CMD. It was accompanied by a "*Care at Home Plan*" dated 7 September 2024 and a signed mandate by Mr Biniak in favour of Ayr Housing Aid Service.
23. On 3 October 2024 the Tribunal acknowledged receipt of the application for recall and sought clarification whether the Care at Home Plan could be passed to the Applicant. A copy of the application for recall was sent to the Applicant.
24. On 4 October 2024 Mr Biniak's representative sent a number of Statements of Fitness for Work for Social Security or Statutory Sick Pay dated 7 June - 19 August 2024. These had been previously sent under cover of the emails of 29 August and 2 September 2024 from Mr Biniak. Mr Biniak's representative also advised that any evidence submitted to the Tribunal could be sent to the Applicant.
25. On 11 October 2024 the Applicant lodged an objection to Mr Biniak's application for recall. He also submitted a further email of objection on 12 October 2024. The Applicant stated Mr Biniak had had adequate time to lodge the recall on time regardless of any language barrier. The Applicant also stated he had received numerous emails from Mr Biniak since the decisions accusing him and his letting agents of hate crimes and of sending people to the Property threatening violence. The Applicant stated that Mr Biniak had also accused him of working in collusion with the Police and Crosshouse Hospital. The Applicant reiterated he had never had any

contact with Mr Biniak as he had stated at the CMD and that the accusations against him were false. He also reiterated his submissions regarding the failure to pay rent. He stated Mr Biniak had neglected the Property, had failed to give access resulting in the Applicant raising an action for access in the Tribunal and that Mr Biniak had made a false insurance claim. His response was sent to Mr Biniak's representative.

26. On 23 October 2024 Mr Biniak's representative advised that he had could not advise that any previous correspondence sent by Mr Biniak to the Tribunal could be crossed to the Applicant and that he had advised Mr Biniak that it was not helpful to keep emailing the Tribunal.
27. On 28 October 2024 the Tribunal granted Mr Biniak's application for recall. Copies of the recall decision were sent in both English and Polish to Mr Biniak's representative and to Mrs Biniak by recorded delivery mail. A copy of the recall decision was also sent to the Applicant.
28. On 7 November 2024 the Tribunal served a copy of the application on the parties and advised them that a CMD would proceed on 19 December 2024. This paperwork was served on the Respondents in both English and Polish by Andrew McLean, Sheriff Officer, Glasgow personally in the hands of Mrs Biniak on 8 November 2024 at the Property. Copies of the Executions of Service were received by the Tribunal administration. Copies of the application in both English and Polish were also sent to Mr Biniak's representative.
29. On 12 November 2024 the Tribunal issued a Notice of Direction to parties. This was served on Mr Biniak's representative in both English and Polish and on Mrs Biniak in Polish by recorded delivery mail. In terms of the Notice of Direction the Applicant was required to provide all documents such as emails, text messages, letters or messages which showed or tended to show the correspondence between the Applicant or the Applicant's agent and the Respondents in relation to the arrears, an up to date rent statement and any other documentation the Applicant intended to rely upon. The Tribunal required the Applicant lodge these documents by 2 December 2024. In terms of the Notice of Direction the Respondents were required to lodge all bank statements or bank transaction records for the period from February 2022 to date which showed all payments made by the Respondents to the rent account for the Property and any other documentation the Respondents intended to rely upon. The Tribunal required the Respondents to lodge these documents by 2 December 2024.
30. On 18 November 2024 Mr Biniak sent the Tribunal a Power of Attorney in favour of the Savannah and Gabriel Save the Children Found Ltd as his "*Advocate and Agent in Court contact persons Mr Andrzej Kupris and Mr Antoni Konrad Urbanek, Master of Law*". It further stated that "*I do not at this time withdraw my full Power to Gerry Tierney, Advocacy and Tribunal*

Worker, Ayr Housing Aid Centre SCIO". This email was marked as "*Confidential*".

31. Before the Tribunal had an opportunity of responding to the email of 18 November 2024, the Tribunal received an email on 20 November 2024 from Mr Biniak's email address from "*DDO Personal Data Department*" at the Savannah and Gabriel Save the Children Found Ltd alleging that the Tribunal had breached GDPR by having sheriff officers attend at the Property address. This email contained a "*Statement of Leaving the Documents of the Other Participant for Collection at a Place where they were left*" and appeared to state the application papers for Mrs Biniak were deposited through their letterbox, not sealed and available for anyone to read. Copies of some of the Polish translated papers addressed to Mrs Binaik were attached. This email was marked as "*Confidential*".

32. On 20 November 2024 the Tribunal emailed Ayr Housing Aid Centre with a copy of the email of 18 November 2024 seeking clarification as to the purpose of the email of 18 November 2024.

33. On 27 November 2024 the Tribunal emailed Mr Biniak's email address in response to the email of 20 November 2024 advising the Tribunal had checked their records and that the sheriff officers did not deposit the paperwork as the correspondence was served on Mrs Katarzyna Wit Biniak personally on the 8 November 2024 at the Property. This email also confirmed that SCTS had a lawful basis for instructing sheriff officers to serve the paperwork, had a lawful basis for providing sheriff officers with a copy of the papers and that the Tribunal was content the application papers had been validly served.

34. On 22 November 2024 the Tribunal received three separate emails from Mr Biniak's email address. The first email was signed off by the "*Department for the Protection of Personal Data, Andrzej Kupis*". They contained a statement of discontent with the representation from the Ayr Housing Aid Service, allegations against the Applicant and his letting agent and an allegation the Lease was invalid. This email stated that the power of attorney granted in favour of Ayr Housing Aid Service was limited but not terminated. It contained company information for various companies, emails between Mr Biniak and Ayr Housing Aid Service, a copy letter dated 11 October 2024 from Mr Biniak's GP addressed to him regarding waiting time for an appointment at hospital, Communication Sheets dated September and November 2024 for East Ayrshire Health and Social Care Partnership, the letter from Universal Credit dated 23 September 2024 originally sent on 25 September 2024, an undated email from the Letting Agent Regulation Team of the Scottish Government, an email dated 15 November 2024 to Environmental Protection Services at East Ayrshire Council, a Care at Home Care Plan dated 15 October 2024, a Personal Carer Visit Log dated

2- 14 November 2024, allegations against a third party, photographs, statements that the Property was unfit for human habitation, a list of medications, a Statement of Fitness for Work for Social Security or Statutory Sick Pay dated 24 May 2024 originally sent with the email of 29 August 2024, the repeated allegations of hate crimes by the Applicant, the victim care card dated 31 October 2023 from Police Scotland originally sent on 6 September 2024, a Police Scotland Crime Report form, a letter dated 31 August 2024 to Police Scotland alleging crimes by the Applicant, the victim care card dated 5 September 2024 from Police Scotland originally sent in the email of 25 September 2024, an accident and emergency report from Crosshouse Hospital dated 5 October 2023, a letter from NHS Ayrshire and Arran dated 19 August 2024 for an outpatient on 2 September 2024, a letter from NHS Ayrshire and Arran dated 2 September 2024 for an outpatient appointment in a nurse led clinic on 1 October 2024 originally sent on 6 September 2024, a letter from NHS Ayrshire and Arran dated 2 September 2024 for an outpatient appointment on 10 September 2024, a letter from NHS Ayrshire and Arran dated 11 July 2024 for an appointment on 7 August 2024 originally sent on 29 August 2024, a letter dated 3 September 2024 from NHS Ayrshire and Arran for an appointment on 17 September 2024, and a record from the Scottish Ambulance Service dated 12 April 2024. These emails were marked "*Confidential*".

35. On 26 November 2024 the Tribunal received an email from Mr Biniak's email address as "*Service Advisor: - Argonauts Media Group*" which stated "*I would very much like to ask for instructions*". The email also showed a reference *the Savannah and Gabriel Save the Children Found Ltd* and the Polish Yellow Pages, and attached one of the emails of 22 November 2024. This email was marked "*Confidential*". Three duplicates of this email were also received by the Tribunal on 26 November 2024 with copies of the emails sent on 22 November 2024. These were also marked as "*Confidential*".

36. On 26 November 2024 the Applicant's representative Maria McNulty from R and G Estate Agents requested that copies of the paperwork be sent to her directly. These were sent to her directly on 27 November 2024.

37. On 27 November 2024 the Tribunal acknowledged receipt of all the emails of 22 and 26 November 2024 and advised Mr Biniak about the duplicates having been sent, and that any submissions should come from their representative. The Tribunal also stated that the second batch of emails requested instructions and pointed out that as previously advised the Tribunal was unable to provide legal advice and referred him to the relevant sections of the Tribunal website where he could find useful links in seeking independent advice.

38. On 28 November 2024, in response to the Notice of Direction the Applicant's representative lodged copies of letters in English and in Polish with rent statements dated 18 and 26 October and 3 November 2023 from the R and G Estate Agents to the Respondents, emails dated 11, 14 and 22 March, 5,6 and 13 April, 3 and 4 May 2022 addressed to Mr Biniak from R and G Estate Agents, an email dated 1 March 2022 from Mr Biniak to R and G Estate Agents, an email dated 28 February 2022 from Mr Biniak to R and G Estate Agents, an email also dated 28 February 2022 from R and G Estate Agents to Mr Biniak, the Respondents' Tenancy transaction details dated 24 November 2024, an emails dated 8 April 2024 from the Tribunal regarding case reference FTS/HPC/RE/23/3614, a copy Rent Book on paper from the Savannah and Gabriel Save the Children Found PLC and headed "Proof R and G Services Ltd. Recording of Payments and Expenses in the Tenant's Book", an email dated 3 January 2024 from Microsoft Outlook showing the email address m.biniak@kilmarnock.scot did not exist, emails dated 15 and 17 November 2024 from Mr Biniak to the Applicant and R and G Estate Agents with a "Request for payment" for £72 450.45 as a "Victim of Crimes" with a copy of the tenancy agreement between the Applicant and the Respondents dated 18 and 19 October 2016 as "Evidence of Crime" a Form J with attachments to the Tribunal dated 11 April 2024 raised by the Respondents against R and G Property Services Ltd alleging unlawful eviction, homelessness, racism, molestation, no renovations and eviction attempts. A copy of these documents were sent to Mr Biniak by email and to Mrs Biniak by post on 4 December 2024.
39. On 29 November 2024 the Tribunal received an email from Mr Biniak's email address as "Service Advisor: - Argonauts Media Group" advising Mr Biniak had been unable to meet with his representative who was not responding to his emails and that Mr Biniak had met with his doctor regarding a planned surgical procedure. This email made reference to GDPR and referred to "DPPD Department for the Protection of Personal Data Andrzej Kupis" This email was marked as "Confidential".
40. A further email was also received on 29 November 2024 by the Tribunal from Mr Biniak regarding the email of 27 November 2024 sent by the Tribunal to Mr Biniak being filed in the "Spam" folder.
41. On 2 December 2024 the Tribunal received an email from Ayr Housing Aid Centre SCIO that they had given advice to Mr Biniak to which he appeared unhappy with and that they had repeatedly requested he refrain from contacting the Tribunal, which had been ignored by him and that in the circumstances the relationship had irretrievably broken down leaving them with no option but to withdraw from acting for Mr Biniak.

42. On 4 December 2024 the Tribunal sent a copy of the email of 29 November 2024 regarding “Spam” emails and the email of 2 December 2024 from Ayr Housing Aid Centre SCIO to the Applicant’s agent.

43. On 12 December 2024 the Tribunal received an email from Mr Biniak’s email address from Andrzej Kupris, Service Advisor, Argonauts Media Group. The email also showed a reference to the Savannah and Gabriel Save the Children Found PLC. The contents of the email were unclear but suggested that Mr Biniak’s email address had been hacked on 2 December 2024 and that it was impossible to contact the Tribunal and that Mr Biniak had sought medical attention. It contained an undated request to “*restore the new deadline for filing documents. The deadline expired on December 02, 2024*” and stated that “*no later than December 07, 2024 by the end of the Court’s business day, we will deliver the Application and Statement along with copies of documents from this email address referred.*” It also made allegations of “*manipulation or financial embezzlement*” by the Applicant and/or his agents and that Mr Biniak’s health problems were caused by “*hate crimes*” committed by the Applicant and a third party. Attached was a report dated 3 December 2024 from the Scottish Ambulance Service attending to Mr Biniak complaining of hypertension and advising him to contact his GP when they left the Property as he was well. It also contained emails dated 2 December 2024 with a revocation of the Power of Attorney in favour of the Ayr Housing Aid Service and a Recorded Delivery slip dated 29 November 2024. All emails were marked “*Confidential*”.

44. On 17 December 2024 the Tribunal received an email from Mr Biniak’s email address from Andrzej Kupris and Antoni Konrad Urbanek, M.A. in Law stating that Mr Biniak had undergone some medical treatment and that he had a loss of hearing and sight. A Statement of Fitness for Work for Social Security or Statutory Sick Pay dated 11 December and covering the period to 18 December 2024 stating “*Tinnitus. Recent hospital stay*” was attached together with a form headed NHS Ayrshire and Arran Care Comfort Round dated 4 December 2024. The email also stated that by 18 December 2024 they would send a procedural motion to re-instate the deadline of 2 December 2024, a procedural request to cancel the CMD of 19 December 2024, a letter from the Health and Safety Manager, and the Chief Accountant regarding liabilities, medical records from the hospital for the period from December 1, 2024 to date and copies of documents from correspondence and actions taken by the Applicant and his agents.

45. On 19 December 2024 the Applicant's agent sent an updated rent statement to the Tribunal showing arrears of £10 326.

Case Management Discussion

46. The Tribunal proceeded with the CMD on 19 December 2024 by way of teleconference. The case was heard with a cojoined action for rent arrears under case reference number FTS/HPC/EV/24/4084. The Applicant was represented by Ms McNulty from R and G Estate Agents. The Applicant and his colleague Alison Patterson were also in attendance. There was no appearance by or on behalf of the Respondents despite the teleconference starting 10 minutes late. Mr Krzyszto, a Polish interpreter was also in attendance.

47. The Tribunal thanked Mr Krzyszto, the interpreter for his assistance and excused him from his duties due to the failure of the Respondents to appear.

48. The Tribunal advised Ms McNulty that it had received some correspondence from Mr Biniak's representatives on 17 December 2024 that indicated Mr Biniak had been recently unwell although there was nothing in that correspondence by way of medical evidence on oath and conscience to show that he was unable to attend the CMD. The Tribunal enquired as to whether in the circumstances the Applicant wanted to proceed with the CMD.

49. Ms McNulty submitted that the Applicant wished to proceed with the CMD. She made submissions that it was not unusual for Mr Biniak to state he had had some serious accident or a stay in hospital a couple of days before a Tribunal hearing or when they were due to inspect the Property. This was a delaying tactic by Mr Biniak. She recalled one occasion where they were due to inspect the Property, and he tried to put it off claiming he had broken all his ribs. They had proceeded with the inspection, and he had no difficulty in running up and down the stairs. In her submission it was unclear whether the Mr Biniak's representatives Mr Kupris and Mr Urbanek lived in the Property. Her company had also received emails from Mr Kupris and Mr Urbanek. There was no reason before the Tribunal as to why they could not represent Mr Biniak at the CMD. Her agency and her colleagues had received numerous emails from Mr Biniak, Mr Kupris and Mr Urbanek which were abusive and made unfounded allegations against them. In her submission the allegations made were false and incredibly upsetting for some of her younger colleagues against whom had had personal

allegations made against them and who felt harassed and threatened by the tone and the language used in the emails.

50. Ms McNulty submitted that at every email they received they were made to “dance to his tune” to ensure they were doing the right thing. Mr Biniak and his representatives were abusing the Tribunal process. He never attended any Tribunal hearings but always tried to delay them. They had to gain an order from the Tribunal to get access to the Property despite his attempts to delay the proceedings.
51. She further submitted that the Respondents had falsified a “rent book” which she had lodged. As letting agents they did not issue rent books and had used electronic means of payment for years. The Respondents were effectively living in the Property rent free. The constant allegations made against the Applicant and her company were farfetched and dangerous. She referred the Tribunal to the emails Mr Biniak had sent on 15 and 17 November 2024 claiming £72 450.45 from the Applicant.
52. At that point the Applicant asked if he could speak. The Tribunal allowed him to do so. The Applicant explained that Mr Biniak had attempted to assassinate his character by making false allegations against him of violence and harassment. The Applicant had been to the Police in Kilmarnock who told him that complaints had been made against him but that there was no evidence to back Mr Biniak’s complaints up. No charges had been brought against him. Mr Biniak had been given a reference number and had been told any complaints against the Applicant was a civil matter. Mr Cavanagh stated he had had no personal contact with either Respondent since 2016. Everything had been done through his letting agent and they had corresponded in both English and Polish with the Respondents. Mr Cavanagh stated he could not emphasise the amount of stress Mr Binaik had caused not only to him, but to his family as well. He stated he was concerned about the state of the Property and how he could keep his property safe. He wanted to proceed with the case.
53. Ms McNulty submitted that she was struggling to understand why the Applicant’s position should be prejudiced by a further delay if the CMD was postponed. It had been 6 months since the CMD on 29 July 2024 when the Order had been originally granted. It had been nearly a full year since the application was submitted. This was a straightforward arrears action. The arrears were now sitting at over £10 000. If the CMD did not proceed there would be a further lengthy delay which was unacceptable and further abusive emails with more excuses as to why the case should not proceed at

the next CMD. In the circumstances she submitted the CMD should proceed in the absence of the Respondents.

54. The Tribunal adjourned to discuss whether to proceed with the CMD in the absence of the Respondents. The Tribunal noted the application papers for both Respondents had been served personally on Mrs Biniak on 8 November 2024. The Tribunal was satisfied the Respondents had received notice under Rule 24 of the Regulations that the CMD would proceed on 19 December 2024. In any event it was clear from the correspondence received from Mr Biniak and his representatives Mr Kupris and Mr Urbanek that they knew the CMD was proceeding on 19 December 2024. Mr Biniak had two representatives who had recently been in contact with the Tribunal and who could have appeared at the CMD. No medical evidence on soul and conscience had been produced to show that Mr Biniak was unable to attend the CMD. All that had been produced was a copy of a Statement of Fitness for Work for Social Security or Statutory Sick Pay dated 11 December and covering the period to 18 December 2024 stating “*Tinnitus. Recent hospital stay*” together with a form headed NHS Ayrshire and Arran Care Comfort Round dated 4 December 2024. The Tribunal considered the relevant circumstances, including the Statement of Fitness for Work and the Care Comfort Round Form, against the background of the whole procedural history. The Statement of Fitness for Work only dealt with Mr Biniak’s fitness for work, not his ability to participate in the Tribunal proceedings. The Tribunal was mindful of the overriding objective under in Rule 2(1) of the Regulations to deal with proceedings justly. In terms of Rule 2(2) dealing with proceedings justly includes dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties seeking informality and flexibility and avoiding delay, so far as compatible with the proper consideration of the issues. The Tribunal accepted Ms McNulty’s submissions that this was a straightforward arrears case which if postponed would severely prejudice the Applicant’s right to rent. It appeared to the Tribunal on balance that it could proceed without the Respondents, both of whom had failed, without reasonable excuse, to attend or be represented, particularly when Mr Biniak’s representatives Mr Kupris and Mr Urbanek M.A in Law had been in contact with the Tribunal two days previously.

55. In the circumstances the Tribunal proceeded with the CMD. The case was heard with an application for eviction under reference FTS/HPC/EV/24/4084.

56. The Tribunal had before it the tenancy agreement dated 18 and 19 October 2016 between the Applicant and the Respondents, an AT5 dated 17 October 2015, an email dated 28 February 2022 from Mr Biniak to R and G

Estate Agents, an email also dated 28 February 2022 from R and G Estate Agents to Mr Biniak, an email dated 1 March 2022 from Mr Biniak to R and G Estate Agents, emails dated 11,14 and 22 March 2022, 5 ,6 and 13 April 2022, 3 and 4 May 2022 addressed to Mr Biniak from R and G Estate Agents, letters to the Respondents in English and Polish with rent statements dated 18 and 26 October 2023 and 3 November 2023 from R and G Estate Agents, post office receipts dated 26 October 2023 and 3 November 2023, Royal Mail Track and Trace receipts dated 27 October 2023 and 6 November 2023, a copy rent book on paper from the Savannah and Gabriel Save the Children Found PLC and headed "*Proof R and G Services Ltd. Recording of Payments and Expenses in the Tenant's Book*", an email dated 3 January 2024 from Microsoft Outlook, an email dated 4 January 2024 from PCKwikFix, an email dated 8 April 2024 from the Tribunal regarding case reference FTS/HPC/RE/23/3614, a Form J with attachments to the Tribunal dated 11 April 2024 raised by the Respondents against R and G Property Services Ltd alleging unlawful eviction, homelessness, racism, molestation, no renovations and eviction attempts, emails dated 15 and 17 November 2024 from Mr Biniak to the Applicant and R and G Estate Agents with a "*Request for payment*" as a "*Victim of Crimes*" with a copy of the tenancy agreement between the Applicant and the Respondents dated 18 and 19 October 2016 as "*Evidence of Crime*", the Respondents' tenancy transaction details dated 24 November 2024, the updated rent statement showing arrears of £10 326 and bank statements. The Tribunal considered the terms of these documents.

57. Ms McNulty moved the Tribunal to grant a payment order for rent arrears against the Respondents. She referred the Tribunal to the rent statement showing arrears had increased to £10 326 from £7451 when the original payment order was granted. She submitted the Respondents had a contractual obligation in terms of the tenancy agreement to pay rent of £575 per month. She referred to the numerous emails and letters that had been sent to the Respondents which were before the Tribunal showing that the Respondents were aware they had to pay rent and that they were in arrears. The letters dated 18 and 26 October 2023 and 3 November 2023 were sent to the Respondents in both English and Polish. Ms McNulty explained they had a Polish speaking member of staff who was able to translate the letters into Polish for them. The Tribunal noted the emails, letters and Recorded Delivery Track and Trace receipts lodged.
58. Ms McNulty submitted that the rent book lodged had been produced by Mr Biniak. However, they did not have a rent book system as payments were made electronically by tenants. She submitted this was a falsified rent book. The dates of payments in that book did not match with their records. Ms McNulty submitted the last payment to account was of £596 on 4

September 2023. This payment had been by bank transfer. She further submitted that they had not had any payments from the DWP. As far as she was aware Mr Biniak was in employment. She submitted that a number of companies and businesses had been registered by Mr Biniak at the Property address and that Mr Kupris and Mr Urbanek were also shown as being connected through these companies and were also shown as being connected to the Property. It was unclear what employment the Respondents had. Despite the Order being granted in July 2024, the Respondents had made no effort to contact them to clear the arrears. They were living in the Property rent free. The arrears were increasing with no prospect of the Respondents clearing them.

Findings in Fact

59. The Applicant is the heritable proprietor of the Property.
60. The Applicant entered into a continuing Short Assured Tenancy Agreement dated 18 and 19 October 2016 and commencing on 30 October 2016 with the Respondents. An AT5 dated 17 October 2015 had been served on the Respondents prior to parties entering into a Short Assured Tenancy in October 2015.
61. In terms of Clause 3.1 of the Short Assured Tenancy Agreement the Respondents agreed to pay rent of £575 per month. The rent has not increased since then.
62. The Respondents started to accrue rent arrears from February 2022.
63. The Applicant's letting agents R and G Estate Agents have regularly contacted the Respondents regarding the arrears. The Applicant's letting agents were in email correspondence with Mr Biniak regarding the arrears from 28 February 2022. Mr Biniak sent an email dated 1 March 2022 to R and G Estate Agents. R and G Estate Agents sent further emails on 11, 14 and 22 March 2022, 5, 6 and 13 April 2022, 3 and 4 May 2022 to Mr Biniak regarding the rent arrears.
64. The Respondents' last payment towards rent was for £596 on 4 September 2023. The arrears had accrued to £1701 by then.
65. R and G Estate Agents sent pre-action letters in both English and Polish to the Respondents on 18 and 26 October 2023 and 3 November 2023. The letter of 18 October 2023 enclosed a copy rent statement and advised the outstanding arrears were £2276, advised the Respondents where they

could seek assistance with paying the rent and signposted them to advice agencies.

66. The letter of 26 October 2023 was sent by Recorded Delivery post and enclosed a copy rent statement and advised the outstanding arrears were £2276, offered to work with the Respondents towards a repayment plan, advised them where they could seek assistance with paying the rent and signposted them to advice agencies. This letter was signed for on 27 October 2023.

67. The letter of 3 November 2023 enclosed a copy rent statement and advised the outstanding arrears were £2851, signposted the Respondents to advice agencies and advised R and G Estate Agents were still willing to agree a repayment plan with the Respondents .

68. The Respondents were in arrears of £7451 on 29 July 2024 when the original payment order was made. The Respondents have accrued further rent arrears and are in arrears of £10 326 to 19 December 2024.

Reasons for Decision

69. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the submissions made by Ms McNulty.

70. The Tribunal noted terms of the tenancy agreement and the rent statement lodged which set out how the arrears had arisen and showed the total arrears to £10 326. The Applicant had produced evidence of persistent non- payment of rent.

71. The numerous emails from Mr Biniak received by the Tribunal eluded that the Respondents had overpaid rent and were not in arrears. A "rent book" had been produced in some of these emails and had been lodged by the Applicant. The Tribunal accepted the submissions made by Ms McNulty that this was falsified and that R and G Estate Agents did not use rent books. The Respondents had produced no evidence to show they had overpaid the rent and were not in arrears. The Tribunal had issued a very clear Notice of Direction to the Respondents on 12 November 2024 that they required to lodge bank statements or bank transaction records for the period from February 2022 to date which showed all payments made by the Respondents to the rent account for the Property and any other documentation the Respondents intended to rely upon. The Respondents had produced no documentation in support of their claim they were not in arrears and had overpaid on the rent. The Respondents' position was not credible. They had

had nearly six months since the original order was granted on 29 July 2024 to produce supporting documentary evidence which may have assisted them in their argument. However, they had not done so.

72. There was nothing before the Tribunal which cast doubt on the credibility of the Applicant's position. The Tribunal accepted Ms McNulty's submissions regarding the amount of arrears, how these had accrued and that they had tried unsuccessfully to get the Respondents to engage with them to clear the arrears. The Tribunal was satisfied on the basis of the documents lodged, together with Ms McNulty's submissions that the order for payment in favour of the Applicant be granted of new for the sum of £7451. The Tribunal were not prepared to grant an order for £10 326 as no application to amend had been made. The sum of £7451 was the amount of arrears as at 29 July 2024 when the original order was granted by the Tribunal.

73. The Tribunal granted an order for payment of £7451. The decision of the Tribunal was unanimous.

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.

S Evans

/ Legal Member

20 January 2025

Date