



**Statement of Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16, Housing (Scotland) Act 2014**

**Chamber Ref: FTS/HPC/EV/19/0821**

**Re: Property at Flat 135/3, Craigmillar Castle Avenue, Edinburgh, EH16 4DN (“the Property”)**

**Parties**

**Mr Murdo Guy, 6 Halsford Park Road, East Grinstead, RH19 1PN (“the Applicant”)**

**Ms Rebeka Owczarek, Flat 135/3, Craigmillar Castle Avenue, Edinburgh, EH16 4DN (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member)**

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent is in breach of the tenancy agreement with the Applicant and has failed to pay rent. The Tribunal accordingly has decided to make an order for payment in the sum of SIXTEEN THOUSAND SIX HUNDRED AND SIX POUNDS AND TWENTY NINE PENCE (£16 606.29) STERLING. **The order for payment will be issued to the Applicant after 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 Respondent.**

**Background**

1. By application dated 8 March 2019 the Applicant’s solicitor applied to the First- tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for payment of rent arrears against the Respondent

relating to a tenancy at Flat 135/3, Craigmillar Castle Avenue, Edinburgh, EH16 4DN ("the Property").

2. On 20 March 2019, the Tribunal accepted the application under Rule 9 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations").
3. On 13 April 2019, the Tribunal enclosed a copy of the application to both parties and invited the Respondent to make written representations to the application by 1 May 2019. The Tribunal also advised both parties that a Case Management Discussion under Rule 17 of the Regulations would proceed on 9 May 2019.
4. The Respondent did not make any written representations by 1 May 2019.

### **Case Management Discussion**

5. The Tribunal proceeded with the Case Management Discussion on 9 May 2019. The Applicant was represented by Miss Caldwell from TC Young, solicitors. The Respondent appeared personally. The Respondent explained that she had consulted Community Help and Advice Initiative ("CHAI") a local charity which offers advice and support for tenants, but CHAI were unable to attend on her behalf at the Case Management Discussion. The Respondent confirmed that she understood the purpose of the Case Management Discussion and felt able to fully participate in the proceedings.
6. The Tribunal had before it an Assured Tenancy Agreement between the Applicant and the Respondent which commenced on 1 July 2012 and dated 4 July 2012 and a rent statement to 5 March 2019.
7. Miss Caldwell explained to the Tribunal that in terms of an Assured Tenancy Agreement dated 4 July 2012, the Respondent agreed to pay monthly rent of £550 to the Applicant on the 5<sup>th</sup> of each month. At the point of lodging the application with the Tribunal the arrears were £15 506.29. She explained the arrears had increased to £16 606.29 and produced a rent statement showing how the arrears had so accrued. In the circumstances, Miss Caldwell sought an order in the increased sum of arrears of £16606.29, there being no prejudice to the Respondent who was in attendance. A copy of the updated rent statement was passed to the Respondent.
8. In response, the Respondent claimed the tenancy agreement was invalid as the Landlord was not a registered Landlord. The Tribunal explained to the

Respondent that the matter of whether the Landlord was or was not a registered Landlord was not a matter before the Tribunal and that the Tribunal was concerned with the tenancy agreement and any arrears of rent arising from that contractual arrangement.

9. The Respondent explained the Applicant was not the Landlord and that a Stuart Guy who had signed the tenancy agreement had introduced himself to her as the Landlord. She did not know who Murdo Guy was. Miss Caldwell explained that Murdo Guy was and always had been the heritable proprietor of the Property and offered to refer to the title of the property. The Tribunal had a copy of the Applicant's Title MID25760 included in the case file. Miss Caldwell explained that Stuart Guy was instructed on behalf of his brother Murdo Guy to manage the Property. On being questioned by the Tribunal, the Respondent accepted she had signed the tenancy agreement which was before the Tribunal dated 4 July 2012 and that in terms of that she had agreed to pay a monthly rent of £550 on the 5<sup>th</sup> day of the month.
10. The Respondent produced a copy letter dated 3 March 2015 she had written to Edinburgh City Council Revenues and Benefits Division. In this she expressed concern that on 19 September 2014 she had received a letter from Stuart Guy's secretary Natasha Lehner which gave details of Guy Murdo's bank account and explained that he, Murdo Guy, was taking back the management of the Property. Ms Owczarek produced a copy of this letter also. The Tribunal Clerk, Mr Kerr arranged for copies of the letters to be made and copies were passed to Miss Caldwell for her consideration. The Respondent did not know who rent up to that point had been paid to. She was suspicious that the letter of 19 September 2014 was some sort of fraud.
11. The Respondent went on to explain that Edinburgh City Council told her Murdo Guy was in receipt of her Housing Benefit towards her rent. However, there had been issues with Employment and Support Allowance throughout the tenancy, as a result of which arrears had accrued. She had taken advice from CHAI who were now going to help her apply for Housing Benefit and who were hopeful that she would be entitled to a backdate in Housing Benefit of 6 months. Going forward therefore, she expected to be in a position to pay the rent in full.
12. She also explained that after a Notice to Quit had been served in 2015, she took advice from CHAI as she was conscious she was in rent arrears, but she could not recall whether they contacted the Applicant or his solicitors TC Young at that time. She was very candid in stating to the Tribunal that her personal and health circumstances were complicated which resulted in her memory not being as it should be and that there had been issues with

Employment and Support Allowance, but she had no money to pay the arrears.

13. Miss Caldwell did not have instructions as to whether CHAI had contacted her client at the time. They had not been instructed further until 2018.

### **Findings In Fact**

14. The Applicant and the Respondent agreed by way of an Assured Tenancy Agreement dated 4 July 2012 in relation to the Property that the Respondent would pay the Applicant a calendar monthly rent of £550 due on 5<sup>th</sup> of each month.

15. The Respondent has fallen into arrears of rent. The last payment to account was on 22 March 2018 when £503.19 was paid. The Respondent has made no payments of rent since.

16. Current arrears are £16606.29.

### **Reasons For Decision**

17. In terms of Rule 13 (1) (b) of the Regulations, the Tribunal being satisfied that there was no prejudice to the Respondent, was prepared to allow the Applicant to amend the sum sought to the higher arrears figure of £16606.29 as shown in the up to date rent statement produced. The Applicant provided evidence of non-payment of rent in the form of the rent statement and tenancy agreement. The Tribunal was satisfied on the basis of the tenancy agreement, rent statement and the supporting oral submissions made on behalf of the Applicant and by Ms Owczarek herself, that the Respondent was in arrears of rent of the sum sought in the application.

### **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.**

**Shirley Evans**  
**Legal Member/Chair**

**10 May 2019**  
**Date**