

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

**Application under Rules 65, 66 and 70 of The First-tier Tribunal for Scotland
Housing and Property Chamber (Procedure) Regulations 2017
Direction under Rule 16 of the First-tier Tribunal for Scotland Housing and
Property Chamber (Procedure) Regulations 2017**

**House at 340 Albert Drive, Glasgow, G41 5HH
(The Property)**

Case References FTS/HPC/CV/19/2878 and FTS/HPC/EV/19/2843

**Mr Iain Morgan, Verehills House, Stonebyres, Lanark, ML11 9UJ (“The
Applicant”)**

Mr Mohammed Hanif, 340 Albert Drive, Glasgow, G41 5HH (“The Respondent”)

**Tribunal Members: Martin J. McAllister (Legal Member) and Elizabeth Williams
(Ordinary Member).**

In this Decision the following provisions are referred to as follows:

The Housing (Scotland) Act 1988 is referred to as “the 1988 Act.”

**The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure)
Regulations 2017 are referred to as “the Rules.”**

DECISION

**I. The Respondent is ordered to pay the sum of TWENTY THREE THOUSAND
NINE HUNDRED AND TEN POUNDS (£23,910) TO THE APPLICANT.**

II. The Applicant is granted an order of possession of the Property.

1. Background

The Applicant submitted two applications. One is in respect of recovery of possession of the Property and the other is in respect of civil proceedings for an order of payment in respect of alleged rent arrears. A case management discussion was held in respect of both applications and, following that, a Direction was issued in terms of Rule 16 of the Rules.

Consideration of the applications was over five days: 17th February, 4th August, 1st September, 22nd October and 26th October, all 2020. 30th March and 1st April 2020 had been set down as days for hearing evidence but these had to be postponed as a result of the emergency provisions consequent to the coronavirus. Evidence was heard on 17th February, 1st September, 22nd October and 26th October.

The Applicant was represented by Ms Louise Bain, solicitor and the Respondent was represented by Ms Claire Cochrane solicitor until she withdrew from acting on 3rd August 2020.

The Hearings on 4th August, 1st September, 22nd October and 26th October were conducted by audio conference as a result of the coronavirus provisions.

It is convenient to set out a summary of the Hearings and any procedural matters dealt with together with details of any interim decisions and Directions.

2. 17th February 2020

The Applicant was present and was represented by Ms Louise Bain. The Applicant was not present but was represented by Ms Claire Cochrane and the Respondent's son Mr Shahid Hanif was also present. The Applicant gave evidence.

Both parties made written submissions prior to the Hearing. Matters were not concluded although some evidence was heard and it was determined that parties should make submissions prior to the continued Hearing which was scheduled for 31st March 2020 and which was subsequently postponed because of the Coronavirus crisis. On 24th February 2020, a Direction was made in terms of Rule 16 of the Rules.

The Direction required parties to make written submissions on the following:
Whether or not the application for possession of the Property can proceed under either or both of Sections 18 and 33 of the 1988 Act and the respective Rules 65 and 66 of the Rules. Both parties made submissions.
The tribunal encouraged Mr Hanif to arrange for the Applicant to get access to the Property.

3. 4th August 2020

The continued Hearing was held on 4th August 2020. It was conducted by audio conferencing because of the coronavirus public health crisis. The Applicant and

Ms Bain were present. The Respondent was not present and was not represented. It was noted that Ms Cochrane, in her email of 3rd August 2020 intimating withdrawal, had stated that she had advised the Respondent of the details to enable him to join the audio conference and that she had sent him a copy of the productions for both parties.

There was a short adjournment to allow the Tribunal administration an opportunity to try and contact the Respondent by telephone. This was unsuccessful.

On 3rd August 2020 the Applicant's solicitor had lodged a series of photographs together with an updated rent statement showing the outstanding sum of rent arrears to be £20,010. Ms Bain sought to have these admitted as productions. The Tribunal allowed these to be lodged.

Ms Bain asked the Tribunal to grant her application to amend the application before the Tribunal to include one under Rule 65 of the Rules.

The Tribunal granted this application and, for avoidance of doubt indicated that it accepted that the application now before it for recovery of the Property contained four positions which Ms Bain wanted the opportunity to argue and Ms Bain indicated that her principal position was as outlined in the original application- under Rule 66 on the 2016 lease but that her *esto* provisions were under Rule 65 on the 2016 lease, Rule 66 on the 2011 lease and Rule 65 on the 2011 lease.

Ms Bain asked the Tribunal to make an interim order in respect of her application under Rule 70. She said that the sum currently outstanding was large and that the Respondent had made no payment of rent since July 2019. She also said that she would be seeking to challenge the veracity of invoices lodged by the Respondent in respect of repairs which he said had been carried out to the Property.

Mr Morgan said that he had had the Property inspected since the last Hearing and that, in general terms, work referred to in invoices of BS Property Care had not been done. Ms Bain said that, at a Hearing, she would intend to question the Respondent about the invoices including proof of payment and the identity of the property or properties where work was alleged to have been carried out.

The Tribunal did not make an interim order for payment.

4. Decision

- 1. The Tribunal allowed the photographs to be admitted as productions and to be numbered as Applicant's documents 24(a) – 24(d) inclusive.**
- 2. The Tribunal allowed the Applicant to amend his application so that it included an application under Rule 65 of The Rules.**
- 3. The Tribunal determined to issue a Direction under Rule 17 of the Rules. The terms of the Direction were:**

The Respondent is required to provide:

- 1. Proof of payment of any invoices paid by the Respondent in relation to any work carried out to the Property.**
- 2. Documentary evidence of all materials used in connection with any repairs carried out on the Property on the instructions of the Respondent.**
- 3. Copies of quotations obtained by the Respondent in respect of repairs to the Property.**
- 4. Copies of any intimations made by the Respondent to the Applicant or any correspondence in respect of withholding of rent because of repairs requiring to be done to the Property.**

The said documentation should be lodged with the Chamber no later than close of business on 24th August 2020.

5. Reasons for allowing amendment and for productions to be lodged late

5.1 The Tribunal considered there to be no prejudice to the Respondent in allowing the photographs to be admitted. It was also necessary for the Tribunal to have an up to date rent statement.

5.2 The Tribunal considered the application for eviction which was before it. The application is dated 11th September 2019 and states that it is relying on a tenancy agreement in which the agreed rent would be £1,300 per month and with a date of entry of 10th September 2016 and that the lease would run to 9th September 2017. The application states that the terms of the lease continued by tacit relocation given that neither party took action to terminate the lease. The application states that rent was paid sporadically and that arrears amount to £5,620.

5.3 The application states that the parties were bound by Sections 18 and 19 of the 1988 Act and that a notice in form AT6 under Section 19 (1) (a) of the 1988 Act was served on the Respondent on 5th July 2019 indicating that it was the intention of the Applicant to raise proceedings for possession of the Property on the basis of Grounds 8 and 12 of schedule 5 to the 1988 Act- that the tenant is in arrears of rent of £4,010 which is more than three months' rent.

5.4 The application also states that the notice also indicates that the Applicant would be relying on Ground 11- that the Tenant has persistently delayed paying rent. The application states that the notice served on the Respondent states that proceedings would not be raised prior to 23rd July 2019 being the earliest date on which proceedings could be raised under Section 19 of the 1998 Act.

5.5 The application states that since the tenancy was a short assured tenancy, the parties were also bound by Section 33 of the 1988 Act and that on 5th July 2019, the Applicant's solicitor gave notice to the Respondent that the Applicant required vacant possession of the Property as at 10th September 2019. The application states that, on 5th July 2019, the Applicant's solicitors served a notice to quit the Property by 9th September 2019.

5.6 The application states that the Respondent has refused to leave the Property and that, the criteria under Section 33(1) of the 1988 Act, having been fulfilled, the Applicant is entitled to an order for possession of the Property.

5.7 The application states that, notwithstanding the notices served upon the Respondent, he has failed to remove himself from the Property and that the Applicant is entitled to bring the lease to an end.

5.8 The Applicant submitted that the application should be amended to allow the Tribunal to consider a Rule 65 application- under section 18(1) of the 1988 Act as well as under Rule 66.

6. Applicable Law

Section 33 of the 1988 Act

Recovery of possession on termination of a short assured tenancy.

(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal shall make an order for possession of the house if the Tribunal is satisfied—

(a) that the short assured tenancy has reached its finish;

(b) that tacit relocation is not operating; and

c) *repealed*

(d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house, and

(e) that it is reasonable to make an order for possession.

(2) The period of notice to be given under subsection (1)(d) above shall be—

(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period;

(ii) in any other case, two months.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that finish shall end (without further notice) on the day on which the order takes effect.

For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.

Section 18 of the 1988 Act

Orders for possession.

(1) The First-tier Tribunal shall not make an order for possession of a house let on an assured tenancy except on one or more of the grounds set out in Schedule 5 to this Act.

(2) The following provisions of this section have effect, subject to section 19 below, in relation to proceedings for the recovery of possession of a house let on an assured tenancy.

(3) If the First-tier Tribunal is satisfied that any of the grounds in Part I of Schedule 5 to this Act is established then, subject to subsections (3A) and (6) below, the Tribunal shall make an order for possession.

(3A) If the First-tier Tribunal is satisfied—

(a) that Ground 8 in Part I of Schedule 5 to this Act is established; and

(b) that rent is in arrears as mentioned in that Ground as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit,

the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.

(3B) Subsection (3C) applies where the First-tier Tribunal is satisfied—

(a) that Ground 8 in schedule 5 is established, and

(b) that all or part of the rent in respect of which the tenant is in arrears as mentioned in that Ground relates to the period during which paragraph 4 of schedule 1 of the Coronavirus (Scotland) (No.2) Act 2020 is in force.

(3C) Where this subsection applies, in considering for the purposes of subsection (4) (as applied in accordance with the modification made by paragraph 3(2)(b) of schedule 1 of the Coronavirus (Scotland) Act 2020) whether it is reasonable to make an order for possession against the tenant, the First-tier Tribunal is to consider the extent to which the landlord has complied with pre-action requirements before raising the proceedings for possession.

(4) If the First-tier Tribunal is satisfied that any of the grounds in Part I or Part II of Schedule 5 to this Act is established, the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.

(4A) In considering for the purposes of subsection (4) above whether it is reasonable to make an order for possession on Ground 8 in Part I of Schedule 5 to this Act or on Ground 11 or 12 in Part II of Schedule 5 to this Act, the First-tier Tribunal shall have regard, in particular, to the extent to which any delay or failure to pay rent taken into account by the Tribunal in determining that the Ground is established is or was a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit.

(5) Part III of Schedule 5 to this Act shall have effect for supplementing Ground 9 in that Schedule and Part IV of that Schedule shall have effect in relation to notices given as mentioned in Grounds 1 to 5 of that Schedule.

(6) The First-tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless—

(a) the ground for possession is Ground 2 or Ground 8 in Part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9, Ground 10, Ground 15 or Ground 17; and

(b) the terms of the tenancy make provision for it to be brought to an end on the ground in question.

(6A) Nothing in subsection (6) above affects the First-tier Tribunal's power to make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, where the ground for possession is Ground 15 in Part II of Schedule 5 to this Act.

(7) Subject to the preceding provisions of this section, the First-tier Tribunal may make an order for possession of a house on grounds relating to a contractual tenancy which has been terminated; and where an order is made in such circumstances, any statutory assured tenancy which has arisen on that

termination shall, without any notice, end on the day on which the order takes effect.

(8) In subsections (3A) and (4A) above—

(a) “relevant housing benefit” means—

(i) any rent allowance or rent rebate to which the tenant was entitled in respect of the rent under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971); or

(ii) any payment on account of any such entitlement awarded under Regulation 91 of those Regulations;

(aa) “relevant universal credit” means universal credit to which the tenant was entitled which includes an amount under section 11 of the Welfare Reform Act 2012 in respect of the rent;

(b) references to delay or failure in the payment of relevant housing benefit or relevant universal credit do not include such delay or failure so far as referable to any act or omission of the tenant.

(9) In subsection (3C), “pre-action requirements” means such requirements as the Scottish Ministers may specify in regulations.

(10) Regulations under subsection (9) may in particular make provision about—

(a) information to be provided by a landlord to a tenant including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy,

(b) steps to be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

(c) such other matters as the Scottish Ministers consider appropriate.

(11) Regulations under subsection (9) are subject to the affirmative procedure.

Schedule 5 1988 Act

Ground 8

Both at the date of the service of the notice under section 19 of this Act relating to the proceedings for possession and at the date of the hearing or

the date of the case management discussion, whichever is the earlier, at least three months rent lawfully due from the tenant is in arrears.

Ground 10

The following conditions are fulfilled—

- (a) the tenant has given a notice to quit which has expired; and
- (b) the tenant has remained in possession of the whole or any part of the house; and
- (c) proceedings for the recovery of possession have been begun not more than six months after the expiry of the notice to quit; and
- (d) the tenant is not entitled to possession of the house by virtue of a new tenancy.

Ground 11

Whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due.

Ground 12

Some rent lawfully due from the tenant—

- (a) is unpaid on the date on which the proceedings for possession are begun; and
- (b) except where subsection (1) (b) of section 19 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings.

- 7. Both parties made written submissions prior to the Hearing on 4th August 2020. These include submissions on the Applicant's request that the application be amended to allow it to be considered under Rule 65 of the Rules.**

7.1 Applicant's Representations

The submissions state that the applications before the Tribunal have been raised under Rule 66 and Rule 70 of the Rules. They state that the Applicant is seeking possession of the Property under Rule 66 of the Rules.

They state that the Applicant had sought to amend the application to include an action for possession under Rule 65 in addition to Rule 66 of the Rules.

They state that the Applicant had lodged a Form E with the Tribunal along with a copy of the short assured tenancy agreement (document 1 of the Applicant's

bundle) and a copy of a letter to the Respondent enclosing a Notice to Quit, Form AT6 and a Section 33 Notice (documents 2-5 of the Applicant's bundle). They submissions state that the form AT6 states that the Applicant is relying on Grounds 8 and 12 of Schedule 5 of the 1988 Act that the tenant is currently in rent arrears of £4,010, which is more than three months' rent and also on Ground 11 that the tenant has persistently delayed in paying rent.

The submissions state that the Respondent was sent a notice under Section 33 of the 1988 Act that the Applicant was seeking recovery of the Property, that it had been leased to him on a tenancy which had commenced on 10th September 2016 and is running on tacit relocation and that the notice required the Respondent to vacate the Property on 10th September 2019.

The submissions state that the Respondent has argued that the tenancy is not a short assured tenancy on the basis that the Applicant cannot produce a signed AT5 form. The representations refer to paragraph 11 of the lease where it states: "I/we acknowledge that the tenancy constituted by this offer and acceptance is a Short Assured Tenancy in terms of sections 32-35 of the Housing (Scotland) Act 1995 and that I have received Notice in Form AT5."

The submissions state that the 2011 tenancy agreement contains:

"This agreement is intended to create a Short Assured tenancy as defined in Section 32 of the Housing (Scotland) Act 1988 and the Tenant acknowledges that he has received prior to commencement of the Tenancy a notice to that effect in form AT5."

It is stated that the applicant's position is that the tenancy is a short assured tenancy.

The submissions state that, when the application form was being prepared, it was noted that the Applicant could select one application type only and that the Applicant's solicitor selected Rule 66 and that in the application it was stated that the parties were bound by Sections 18 and 33 of the 1988 Act and that the grounds relied upon by the Applicant were Grounds 8,11 and 12 of Schedule 5 of the 1988 Act.

The submissions state that since the tenancy was a short assured tenancy then the parties were bound by Section 33 of the 1988 Act and the application made reference to the Notice sent to the Respondent under Section 33 of the 1988 Act.

The submissions set out the Applicant's position that possession of the Property can be obtained under Section 33 of the Act. The submissions concede that the Applicant cannot provide a signed copy of the 2016 tenancy agreement but was seeking to rely on the unsigned copy produced at document 1 of the Applicant' bundle of documents. They state that the tenancy agreement dated 2011 shows the monthly rent to be £1,000 and reference is made to copy bank statements relating to Mrs Morgan's account which have been lodged and which show a payment of £1,000 on 15th August 2016 and £1,300 on 12th September 2016. The submissions state that these payments reflect the terms of the 2016 tenancy agreement and that this is the agreement which the Applicant is relying on. The Submissions state that, if the Tribunal considers that the 2016 tenancy

agreement is valid notwithstanding it not having sight of a signed copy, the Applicant is entitled to seek possession of the Property under Section 33 of the 1988 Act.

The submissions state that the Applicant seeks to amend the application to include an application under Rule 65 relying upon Section 18 of the 1988 Act. It is stated that the Applicant considers that the Respondent has had notice of the Applicant's intention to recover possession on the basis of rent arrears since it is clearly stated within the application. The submissions state that the amendment sought was to formalise what is already contained within the application. They state that the Applicant's principal position when the application was submitted was to rely on Section 33 of the 1988 Act but that it was clear from the application itself that although the box for Rule 66 was ticked, that the pleadings also refer to the other grounds including non-payment of rent and rental arrears.

The submissions state that if the Tribunal finds that the 2016 tenancy agreement cannot be relied on then the Applicant would seek to rely upon the 2011 Agreement and that the Tribunal has all the documentation to consider this albeit that the copy tenancy agreement was provided by the Respondent. The submissions state that the Applicant is entitled to terminate the agreement as contained in paragraph of the Terms and Conditions, which refer to the Schedule 5 grounds.

The submissions state that the Respondent would be aware that, by failing to make payment of rent and arrears, the Applicant would seek possession of the Property for those reasons and that no prejudice would be caused to the Respondent in allowing the case to proceed in terms of Sections 33 and 18 of the 1998 Act.

The submissions state that if the Tribunal was not minded to find that the Respondent can be evicted under Section 33 of the 1988 Act then the Applicant would be seeking an order for eviction to be granted in terms of Section 18.

The submissions state that the Respondent was aware of the Applicant's intention to evict on the grounds of non- payment of rent and considerable rent arrears which, at the date of the submissions, amount to £13,510. The submissions state that the issue was raised in text messages between the parties.

The submissions state that, although it may be argued that the Respondent was unaware of the grounds for recovery as they were not specifically detailed in the Lease, he is a man of business and is used to renting commercial premises. The submissions refer to a document lodged which show that the Respondent is a director of two limited companies and, as such, would have been aware of the implications of being party to a lease and the consequent obligations.

The submissions state that if the Respondent was aware of his weight to withhold payment of rent in the event of breach of a landlord, it was not credible that he would not know of the risk of recovery of the Property in the event of rent not being paid.

The submissions conclude by stating that the Applicant is seeking the Tribunal to allow the application to proceed on the basis of both sections 18 and 33 of the 1988 Act.

7.2 Respondent's Representations

Rule 66 Application

The submissions state that the Respondent does not consider that the application can proceed under Rule 66 of the Rules.

The submissions state that the 2016 tenancy agreement lodged by the Applicant is unsigned, the Respondent does not recall having signed it and the Applicant admits that he has never had a signed copy of this tenancy agreement.

The submissions refer to the tenancy agreement signed by the parties on 17th October 2011 where the date of entry is stated to be 1st October 2011 and the end date is stated to be 2nd October 2014. Reference is made to that tenancy agreement having no provision for it to continue for any other period of let following its initial three year term and that therefore the lease relocates annually from the original ish.

The submissions state that the 2011 tenancy agreement is not accompanied by an AT5 or anything similar and it is not known if the prescribed information was provided to the Respondent before the creation of the tenancy. The submissions state that the tenancy is an assured tenancy in terms of Section 12 of the 1988 Act and that the Applicant is not entitled to rely on Section 33 of the 1988 Act.

The submissions state that if the Tribunal finds that the 2011 tenancy agreement is a short assured tenancy, then it is the Applicant's position that the applicant has failed to terminate the tenancy agreement by serving a valid notice to quit. The notice to quit states that the tenancy would come to an end on 9th September 2019 and it is submitted that it is incompetent as it sought to bring the tenancy to an end in advance of the next available ish date, being 2 October 2019. It is stated that the tenancy continues by tacit relocation and that, in terms of Section 33(1) (b) of the 1988 Act an order of possession cannot be granted where tacit relocation is in operation.

The submissions state that if the Tribunal finds the 2016 tenancy agreement to be the relevant tenancy, then it is the Respondent's position that the 2016 agreement is not a short assured tenancy in terms of Section 32 of the 1988 Act. They state that it is not known if the prescribed information was provided to the tenant prior to the creation of the tenancy. The submissions rely on the Applicant not having lodged a signed copy of the AT5 with the Tribunal. It is stated that any tenancy which would have been created in 2016 would therefore be an assured tenancy in terms of Section 12 of the 1988 Act and that therefore the Applicant is not entitled to rely upon Section 33 of the 1988 Act as no short assured tenancy exists between the parties.

Rule 65 Application

The submissions respond to the Applicant's request to amend the application to allow it to be considered under Rule 65 of the Rules in the event that the Tribunal finds that the 2011 tenancy agreement is the relevant agreement. It is submitted that such an amendment should not be permitted because any such amendment would be frivolous within the meaning of Rule 8(1) (a) of the Rules.

The submissions state that the application was not accompanied by a copy of the 2011 tenancy agreement and that it therefore does not meet the requirements of Rule 65 (b) (i).

The submissions state that, in the event of the Tribunal allowing the application under Rule 65 to proceed, it should nonetheless be rejected because the terms of the 2011 tenancy agreement are insufficient to satisfy the terms of Section 18(6) of the 1988 Act.

The submissions state that it is considered that the Notice to Quit dated 5th July 2019 is invalid and that the tenancy therefore remains a contractual assured tenancy.

The submissions state that an order for recovery of possession has to comply with the terms of Section 18(6)(b) of the 1988 Act. They state that an order for recovery of possession cannot be made unless the terms of the tenancy make provision for it to be brought to an end on the ground in question and that in this case, the Applicant seeks to bring the tenancy to an end on Grounds 8,11 or 12 which are not referred to in the tenancy agreement.

The submissions refer to *Royal Bank of Scotland v Boyle* (1999) Hous LR63 and *Eastmoor LLP v Bulman* 2014 WL 406391

The submissions state that paragraph 1 of the tenancy agreement fails to comply with Section 18 (6) (b) of the 1988 Act as it only refers to the numbers of grounds set out in Schedule 5.

1. The Tribunal considered that there was sufficient information contained within the written submissions to allow it to make a decision as to whether or not the application could be amended to allow it to be considered under Rule 65 of the Rules. In determining the matter, the Tribunal had regard to Rules 2 and 3 of the Rules:

8. The overriding objective

2. (1) The overriding objective of the First-tier Tribunal is to deal with the proceedings justly.

(2) Dealing with the proceedings justly includes—

(a) dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties;

- (b) seeking informality and flexibility in proceedings;
- (c) ensuring, so far as practicable, that the parties are on equal footing procedurally and are able to participate fully in the proceedings, including assisting any party in the presentation of the party's case without advocating the course they should take;
- (d) using the special expertise of the First-tier Tribunal effectively; and
- (e) avoiding delay, so far as compatible with the proper consideration of the issues.

Effect of the overriding objective

(1) The Chamber President and the First-tier Tribunal must seek to give effect to the overriding objective when—

- (a) exercising any power under these Rules; and
- (b) interpreting any rule.

(2) In particular the Chamber President and the First-tier Tribunal must manage the proceedings in accordance with the overriding objective.

(3) The parties must assist the Chamber President or the First-tier Tribunal to further the overriding objective.

9. The Tribunal determined that the Respondent was not prejudiced by the application being considered under Rule 65 of the Rules. He had notice of the issues which would be dealt with in such an application notwithstanding that the requirements of Rule 65(b) (i) had not been met. The Respondent had lodged a copy of the 2011 lease. The Tribunal considered that, to deal with the proceedings justly, the Applicant was entitled to an opportunity to argue the matter before the Tribunal. It did not consider at that stage whether or not there is merit in the application which was before it if the amendment be allowed. That is a matter to be determined. The Tribunal indicated to the Applicant's solicitor that there were issues with both the 2011 and 2016 leases which the Applicant would have to overcome if the application for eviction were to succeed.
9. It was evident to the Tribunal that the issue of repairs to the Property would be significant in any consideration of the application and that it would assist it to have more information from the Respondent. It was therefore appropriate that it make a Direction in this regard.

10. The Tribunal did not consider it appropriate to make an interim award in respect of the Rule 70 application. Evidence would require to be led and it was not appropriate for this to be done in the absence of the Respondent.

11. The Tribunal could not be certain that the Respondent had had sufficient time to instruct alternative representation and it could not be certain that he had received the communication from his former solicitor prior to the Hearing.

12. Consideration of both applications was adjourned to 1st September 2020 at 10 am when the Hearing would be conducted by audio conferencing.

13. 1st September 2020

The Applicant was present and was represented by Ms Louise Bain. The Respondent was present and was unrepresented. The Tribunal were assisted by the participation of an interpreter. Mr Hanif wanted the Hearing to be adjourned because he did not have a solicitor. The tribunal had received a request from Legal Services Agency a few days prior to the Hearing. It stated that it had been instructed by the Respondent on 19th August 2020 and had discovered that the Respondent did not have the benefit of Legal Aid. The intimation from LSA sought an adjournment to allow an application to be made. This was refused but the tribunal advised the solicitor that it was open for her to address it on the matter at the Hearing but, prior to the Hearing, she intimated that she no longer acted for the Respondent.

Ms Bain opposed Mr Hanif's motion for an adjournment. She said that the matter had been ongoing for some considerable time, that no rent had been paid since July 2019 and that the Respondent had had an opportunity to obtain alternative representation. Mr Hanif could give no explanation as to why he had been unable to get a solicitor or Legal Aid.

The tribunal considered matters and refused the motion for adjournment. The matter had been ongoing for some considerable time and the Respondent had had time to obtain representation and Legal Aid. Mr Hanif was questioned about the Direction which had been served on him. He said that he did not know anything about it and how to deal with it. He agreed that he had his son to help him and he was told in clear terms what was expected of him in relation to the Direction and what documentation he should produce. It was also explained to him where he should send the documents.

Mr Hanif said that he had not retained any money and had no money available to make any payment in respect of rent including a part payment.

The tribunal refused the application for an adjournment and evidence was heard from the Applicant. Matters were not concluded and, at the conclusion of the Hearing, details of suitable dates were taken from parties so that three dates could be assigned for further Hearings.

(Subsequently 21st, 22nd and 26th October were fixed. 21st October was later postponed on the motion of the Applicant's solicitor who had a clash of court dates and a further date of 20th November was allocated).

14.22nd October 2020

The Applicant was present and was represented by Ms Louise Bain, solicitor. The Respondent was present and he was unrepresented. Mr and Mrs Morgan gave evidence. Prior to the Hearing Mr Hanif had telephoned the clerk and said that he had a sore throat and would be unable to attend. He was told that he would require to make such representations to the members of the Tribunal. Mr Hanif said that he wanted the Hearing to be adjourned because he did not feel well. He said that he would have difficulty in speaking. He confirmed that he was in Glasgow and that his wife could not assist because, although she was in the house, she was sleeping. He said that he would do his best to attend on 26th October 2020. Ms Bain opposed the adjournment and cited the high level of arrears and the Respondent's previous history in asking for adjournments which appeared, to her, to be an attempt to postpone determination of the applications. She referred the tribunal to the overriding objective contained in Rule 2 and she said that, to deal with matters justly, the tribunal should not allow the adjournment.

The tribunal refused the Respondent's application for an adjournment and the Hearing proceeded.

Mr Hanif made a clear statement as to why he considered that he should not be found liable for payment of rent. He said that his house had to be repaired and that he had suffered four years of problems with the Property. Mr Hanif was asked about non compliance with the Direction which had been served on him. At first he said that he did not know what documents were to be produced and he then said that he had sent his "whole file" to the Tribunal office. (no documents had been received from Mr Hanif).

The Hearing continued and Mr Morgan gave evidence. After some period, Mr Hanif said that he was unwell and could not speak. He then made around six bellowing noises. He said that he would have to leave. He then stated that it was his understanding that the Hearing could not continue without him and that he would try and attend the next Hearing on 26th October. It was made clear to the Respondent that the tribunal may consider matters in his absence. Mr Hanif said that it would need to continue without him and he left the conference call.

Mr Hanif left and the tribunal considered whether or not the Hearing could continue. Ms Bain again cited the level of arrears and the Respondent's previous attempts to have matters adjourned. She also said that the tribunal had the advantage of the extensive written representations which the Respondent's former solicitor had made and which the tribunal could consider. She invited the tribunal also to place weight on the fact that the Respondent had not engaged with the process in as much as he had not complied with the Direction which had been served on him by Sheriff Officer and that this was despite the tribunal making clear to him on 1st September what he was required to do. She also said that, despite having time to arrange legal representation, the Respondent had not done so. Ms Bain said that the evidence which she was taking from Mr Morgan, and would continue to do so, is in relation to interactions between the parties which are contained in text and whatsapp messages which are lodged and which the Respondent would have copies of. She said that there would be no particular prejudice to the Respondent because he could lead evidence on the matter at the next Hearing.

The tribunal continued with the Hearing in Mr Hanif's absence.

15.26th October 2020

The Applicant was present and was represented by Ms Louise Bain. Mr Hanif was present and he said that he was still unwell and he said that his throat was sore and that he could not speak. He said that he could listen but that he could not speak. When asked why, if he was unwell on 22nd October, he had not got someone to assist him at this day's proceedings, he said that he could not get anyone such as a family member to aid him. The tribunal was assisted by an interpreter. As a preliminary matter, Ms Bain referred to an updated rent statement which she had lodged with the tribunal on 22nd October. She said that this showed the arrears of rent to be £23,910. Despite this, the tribunal members had not been sent it by the Tribunal office. Mr Hanif did not have a copy of it. He was asked if he disputed that, although he did not consider he should have to pay rent, the rent unpaid amounted to £23,910. Mr Hanif did not respond and,

prior to Ms Bain leading any evidence, he left the conference call. There was a short adjournment during which the clerk attempted to telephone the Respondent and he reported that it appeared that his telephone had been switched off. Ms Bain indicated that she wanted to proceed because she had a witness available. She again suggested that the Respondent was not engaging with the process and was seeking to postpone determination of the application. She reminded the tribunal that the case had first called in February 2020 and that, whilst there was delay caused by the coronavirus situation, it is in the interests of justice that the matter be determined. She did not want the matter to be adjourned to 20th November 2020 which was the next date set down for the Hearing. She said that, if the Respondent were ill, he could have got someone else to represent him. She said that no medical evidence has been produced for the Tribunal to rely on, far less a soul and conscience certificate. She said that, by not complying with the Direction, the Respondent had demonstrated his unwillingness to engage properly with the process. Ms Bain said that the tribunal knew the Respondent's position which is that the rent is not due because of repairs required to be carried out on the Property. She said that the Respondent's written representations did not dispute that rent had not been paid. She also said that Mr Hanif had previously stated that he had not set aside any money for rent which demonstrated that he had not been retaining it until any repairs had been done.

The tribunal continued the Hearing in the absence of Mr Hanif although the interpreter was held in readiness for some time in case the Respondent returned to the call. He did not and the interpreter was discharged.

16. Findings in Fact

- 1. The Respondent is a tenant in the Property by virtue of a tenancy agreement dated 1st October 2011.**
- 2. The term of the tenancy was from 1st October 2011 to 2nd October 2014.**
- 3. The initial rent payable under the tenancy agreement was £1,000.**
- 4. The rent was adjusted to £1300 in September 2016 and the Respondent paid rent at that level until August 2018.**
- 5. The last payment of rent made to the Applicant in respect of the Property was a payment of £800 in July 2019.**

6. The total rent due and owing by the Respondent to the Applicant on 26th October 2020 is £23,910.
7. The Applicant served notice on the Respondent on 21st January 2020 requiring the tenancy to be brought to an end on 2nd October 2020.
8. The Respondent has not removed from the Property.

Findings in Fact and Law

1. The tenancy agreement is a short assured tenancy agreement which does not fully comply with the requirements of Section 18(6)(b) of the Housing (Scotland) Act 1988.
2. The tenancy continued by tacit relocation from 3rd October 2014 to 2nd October 2015 and thereafter annually by tacit relocation until 2nd October 2020.
3. The notice served on the Respondent on 21st January 2020 brought the tenancy to an end on 2nd October 2020.

Reasons

17. The tribunal heard evidence on 17th February, 1st September, 22nd October and 26th October 2020.

Although the Respondent did not formally give evidence, he did make statements which the tribunal was entitled to take as his evidence. He said that he had no money to pay rent and had not retained any funds from the rental payments he was due under the tenancy. He also stated that he was not due to pay any rent because of the repairs which require to be carried out to the Property.

The tribunal heard evidence from the Applicant, Mrs Lisa Morgan, wife of the Applicant and Mr Thomas Blair.

18. Rent Due in terms of Tenancy Agreement

Ms Bain had lodged rent statements during the course of the Hearings and had sought to bring them up to date as matters proceeded. The most recent statement which had been lodged on 22nd October but which had not been provided to members of the tribunal until 26th October showed that the sum outstanding as at that date was £23,910.

Both Mr and Mrs Morgan said that, up until August 2018, the rent had been paid more or less on time. They said that, on some occasions, payment was late but

was then made up. Mrs Morgan cited an example of this by reference to the rent statement. She said that there was no payment for February 2018 and then double was paid the next month. They also said that irregular amounts were paid and they were directed to the rent statement and they both confirmed that this showed this to be the case Mr and Mrs Morgan said that, in September 2016, it was a matter of agreement that the rent be increased from £1,000 per month to £1,300 per month. Mrs Morgan said that a new tenancy agreement had been prepared at that time and had been sent to Mr Hanif. She said that the signed document had never been returned by him. She was directed to the rent statement and confirmed that the entry for August 2016 showed a payment of £1,000 and that in September 2016 there was a payment of £1,300. She said that this reflected the fact that there was a new agreement and a new lease with rent at £1,300 per month. Mr and Mrs Morgan also gave evidence that the last payment towards rent made by the Respondent was the sum of £800 in July 2019.

19. Non Payment of Rent and Repairs

Mr and Mrs Morgan were clear in their evidence that the reason for the arrears of rent was that the Respondent could not pay because of financial issues which he and his family had.

Mr Morgan said that the Respondent had been a tenant in the Property since 2011. He said that there had been a short assured tenancy agreement entered into in 2011 and that the rent due and payable under that lease was £1,000 per month. He said that it was agreed that the rent would be increased to £1,300 and that this was reflected in a new tenancy agreement which was prepared in 2016. Mr Morgan confirmed that the rental agreement prepared at that time was the Applicant's document 7(a) – 7(f). He said that the Respondent had been a good tenant and that is why a letting agent was not used. He said that his solicitors drafted the lease document and that he then sent it to the Respondent. He said that he was sure that the lease was hand delivered to the Respondent in duplicate but that he could not be sure of that. Mr Morgan said that he had a medical condition which affected his short and long term memory. He said that the Respondent said that he needed a fresh lease. Mr Morgan said that the date of entry on the 2016 lease was 10th September 2016. He was referred to the lease document and said that it was from that date to its expiry on 9th September 2017. He said that an AT5 form would be sent at the same time as the Lease and that he would send everything which his solicitors had told him to. Mr Morgan said

that he had asked for the signed documents to be returned to him but that he had not chased it as much as he should have done. Mr Morgan said that there had also been a lease prepared in 2014 but that he did not have a copy of it.

20. Mr Morgan said that the Respondent's position is that he was and is not paying rent because of repairs which were and are required to the Property. He said that, at any time when he was made aware of any repairs being needed, they were attended to within a matter of days. He said that the tenant had wanted to carry out some maintenance and decoration himself and that he had no problem with that.

Mr Morgan said that he ensured that the Property was kept wind and watertight and that he often sent contractors to deal with repairs. He said that, for a considerable time, he had been unable to get access. He said that he had concerns because the submissions from the Respondent's solicitor states that water is running from light fittings and he said that he needed to address this immediately not only because of deterioration to his property but also from a safety perspective.

Mr Morgan said that he did not hear about any repairs being required until he had been pressing for rent to be paid. He said that any repairs which the Respondent was referring to were historic repairs which had been dealt with. Mr Morgan was referred to Respondent's Document 4(b) and he confirmed that this was a text message from Rani Hanif to his wife relating to a repair which was required. Mr Morgan said that the repair referred to was completed. He said that the invoice from SMR Services in respect of that work is Applicant's Document 22. He said that this is for the sum of £579.34 and is dated 28th February 2015. He said that the work related to a cupboard area below the shower room. He said that this work involved dealing with the shower above the kitchen cupboard. He said that joists and flooring was replaced together with pvc panelled walls.

Mr Morgan was referred to the Respondent's Document 5. He said that this seemed to show a cricket bat supporting a kitchen unit. He said that he had no knowledge of when that photograph was taken but that it might have been at the time that the drains were blocked. He was also referred to Respondent's document 6 and he did not know what they showed or when the photographs had been taken. He said that he was certain these showed historic issues which had been repaired long before the Respondent stopped paying rent in 2019.

21. Mr Morgan was referred to the Applicants' Documents 20(a) to 20(j). He said that this was a report and accompanying photographs from Tommy Blair, his contractor, who traded as T.D Blair.

Mr Morgan said that the report which is dated 6th February 2020 detailed the work which Mr Blair had done in April 2017. He said that there had been a complaint of water ingress and that Mr Blair unblocked the gutters. He said that Mr Blair found a considerable amount of debris which had been carried by birds and their droppings and that he believed that the prime cause of this was the considerable number of pigeons kept by the Respondent in an outbuilding of the Property. Mr Morgan was referred to Applicant Document 20(l) and he confirmed that this was a photograph showing pigeons roosting in an outbuilding. Mr Morgan said that he had personally not seen any pigeons. Mr Morgan said that Mr Blair's report referred to blocked drains. He said that the Property has a basement area and that the drain runs through this. He said that the shower had been backing up and had not been draining away. He said that he wanted it sorted once and for all. He said that Mr Blair found that the drain to the main sewer was blocked and that he was able to unblock it but formed the view that the problem was caused by the tenant putting food fat down the drain. Mr Morgan said that it was reported to him by Mr Blair that he believed that the Property was being used for commercial food preparation. He said that he had been told that there was evidence of "mass cooking" and that it was more than one would expect from a couple.

Mr Morgan said that various workman who have been at the Property over the years have commented on what would appear to be commercial preparation of food. He said that the Respondent had a number of restaurants.

22. Mr Morgan said that document 20(h) of the Applicant's documents show the gutter area before it had been cleared and that 20(i) showed it after Mr Blair had done the work. He said that document 20 (j) showed the gutter to the front of the house when part of it had been cleared. He said that this photograph also showed damage caused by pigeons.

Mr Morgan said that the Property is a substantial stone built house with five bedrooms and two sitting rooms. He said that it had a glass dome and that historically there had been water ingress. He said that this was repaired by another contractor some years ago and that it had been checked and further repaired by Mr Blair in 2017. Mr Morgan said that the documents 20(d) to 20(g) of the Applicants' documents show photographs of repairs to the dome and surrounding area which Mr Blair carried out in 2017. He said that, in 2017, there had been a separate issue with water ingress from a leaking shower and that sealant had been applied and that all was made watertight in 2017. Mr Morgan

said that Mr Blair also checked work carried out by a previous contractor, APM Contracts and found it to be sound.

23. Mr Morgan was referred in detail to the report prepared by Mr Blair and he confirmed that the work referred to was done. He said that one of the issues had been caused by pigeons nesting in a ceiling area of the house and that these pigeons belonged to the Respondent.

Mr Morgan said that Mr Blair's report referred to stonework being removed to allow access for a cat. He said that this had been removed without his authority and had caused damage to his property. He said that he had been horrified to discover that.

24. Mr Morgan was referred to the Respondents' Document 3 and he confirmed that this appeared to be an invoice dated 4th June 2017 from BST Property Care for replacement of a toilet and sink together with tiling. He said that he knew nothing about any work carried out which would relate to that. He said that this was a separate bathroom to the one where work was carried out by SRM Services. He said that he has never had any indication that there was an issue with that bathroom and he queried the necessity for any work and if work had, in fact, been done. He said that he could not understand why a tenant would carry out such work without a landlord's permission and why such money would be spent on a property which was not owned. Mr Morgan also said that the tenant's position would seem to be that he had financial difficulties. Mr Morgan said that, after the Tribunal Hearing on 17th February 2020 when access had been facilitated by the Tribunal, Mr Blair had inspected the Property and had found that none of the work detailed on the invoice had been done. Mr Morgan said that an invoice lodged by the Respondent had been for a different address than that of the Property and he believed that the address on the invoice was for a property owned by another member of the Hanif family.

25. Mr Morgan said that the work detailed in the Respondent's Document 2 was, in his opinion not carried out. He confirmed that it appeared to be an invoice from BST Property Care dated 7th April 2018 for work to the dome, lead flashing, leak at the shower room, cistern and water damage. He said that it did not make sense and that anyone carrying out such work would obtain approval from a landlord. He said that Mr Blair has told him that no such work has been done.

26. Mr Morgan was referred to Applicant's document 18(a). He said that this is a text message sent to him by Shahid Rani on 25th May 2018. The message states:

“Hi its Shahid ranis son my mum is going through a lot of stress she’s been taken into hospital twice this week her brother took a stroke last night and another is in hospital in Perth plus her mum passing away was very hard for her my family is going through a very tough time I’m looking after them and sorting there rent out for them your rent will be in your account next Friday as I won’t get paid from work till then and if you can change the rent date till he 30th it would help and save any future confusion as I understand your frustration as you expect it on the 21st just the last 2 months it’s been hard but from now on the rent will be in on the 30th 100% sorry for any stress that I’ve caused use in the last 2 months but in future the money will be in before expected.”

Mr Morgan said that he found it strange that this message did not refer to the repair referred to in the invoice of 7th April 2018 which one might expect. He also did not think it feasible that someone with financial difficulties would be spending thousands of pounds on a property which he did not own. He said that, on several occasions, the Respondent asked for the rental payment date to be changed and that he always tried to accommodate this. Mr Morgan said that Applicant’s Document 18(c) was a payment confirmation of payment of £1,300 on 29th May 2019 and that 18(f) shows a payment of £1,300 on 23rd July 2018. Mr Morgan said that Shahid Hanif was stating that repairs required to be done but nevertheless the rent continued to be paid. Mr Morgan said that at no point in this period were there any representations to him or his wife from the Respondent that repairs were required.

27. Mr Morgan was referred to Applicant’s Document 18(i) and he said that this showed a text message from Shahid Hanif on 10th September 2018 stating that his father needed a new tenancy agreement in his name. Mr Morgan said that his response on 17th September referred to the lease document which was sent to the Respondent and Mr Morgan said that what he was referring to was the lease agreement which had been sent to the Respondent in 2016 and he said that this was the tenancy agreement at Applicant’s document 7(a).

28. Mr Morgan stated that the Applicant’s Document 18(j) showed an exchange of text messages his wife had had with Shahid Hanif in September 2018 with regard to non payment of rent. Mr Morgan said that his view was that the Respondent was having financial difficulties and that was why the rent was not paid at that time.

29. Mr Morgan said that the photographs shown at Applicant’s Documents 18(d) and 18 (e) show historic issues which have been resolved and that this was the

same for the references made by Shahid Hanif in his text messages at Applicant's documents in 18(l),18(m) and 18(n). Mr Morgan said that he thought that Shahid was using this issue as a reason not to pay the rent.

30. Mr Morgan said that the Applicant's Documents 18(p), 18(q) and 18(r) show exchanges of text messages between Shahid Hanif and Mrs Morgan in October and November 2018 showing that, for one month only £1,000 was paid for the October rent, that Shahid Hanif said that it was an error and that by 21st November neither the sum of £300 or the sum of £1,300 due for November 2018 had been paid. Mr Morgan said that no explanation for this had been provided by the Respondent or any member of his family. He referred to Applicant's documents 17(a), 17(b) and 17(c) which are Whatsapp messages between Shahid Hanif and Mrs Morgan. He said that they show that the full rent was not paid. He said that there were promises of payment and an example of this was the message from Shahid Hanif on 23rd November 2018:

"Hi Lisa I put £850 in and I'll put £850 in next week that's all I had in my account but you'll get the rest next week 100%... I only have £5.13 to my name but you'll get the rest next week."

Mr Morgan said that, as far as he was concerned, this showed that the Respondent could not afford to stay in the Property.

31. Mr Morgan said that the non payment of rent had significant financial consequences for him. He said that the monthly mortgage payment on the Property was £2,300 and that he had various insurances and other expenses. Mr Morgan was referred to Applicant's Documents 16(a) and 17(e). He said that these relate to non payment of rental arrears and rent as at December 2018. He said that they show that Rani Hanif is stating that Shahid Hanif will pay what is due but that matters were not resolved.

32. Mr Morgan was referred to Applicant's Document 17(f) and he said that this showed Whatsapp messages between Mrs Morgan and Shahid Hanif in July 2019 where there were undertakings by Shahid Hanif that money would be paid:

"Yes I'm putting a payment in just waiting on it coming into my account."

Mr Morgan said that his wife's message of 22nd July 2019 refers to recovery action proceeding unless all arrears are paid:

"Hi I got the £800 last Friday. When will remaining £3020 and this months rent of £1,300 be paid. Now £4,320 in arrears. Until all arrears paid up to date- my solicitor will continue to proceed with actions."

Mr Morgan said that the action for recovery could have been stopped if all the arrears had been paid.

33. Mr Morgan said that he had been trying to get access to the Property and that he was denied it. He referred to Applicant's document 17(g) where Shahid had stated in a Whatsapp message dated 30th July 2019 that

"Yes no one is getting access the rent will be sorted soon so do not give me this threat again."

34. Mr Morgan was referred to Applicant's Documents 17(g), 17(h) and 17(i). He said that this showed an exchange of Whatsapp messages between his wife and Shahid Hanif in August and September 2019 where Mrs Morgan had stated that proceedings for recovery could be stopped if rent arrears were paid. A message from Shahid Hanif stated that his mother would not be leaving the house and, when told that the arrears were at £5,620 with a further sum of £1,300 due on 20th September 2019, said that a house in Pakistan would be sold and the funds used to pay what was due.

Mr Morgan confirmed that at no time during these exchanges was there reference to any repairs being required to the Property.

35. Mr Morgan said that the Applicant's Documents 17(j), 17(k), 17(l) and 17(m) show fourteen Whatsapp messages from Mrs Morgan to Shahid Hanif between 9th September and 26th November 2019 regarding non payment of rent and access to the Property. He said that these messages were not responded to and that no payment was made during this period. Mr Morgan agreed that the message of Mrs Morgan dated 20th November 2019 stated that the arrears were now at £9520. Mr Morgan said that no access to the Property was achieved until the Tribunal facilitated it at the Hearing on 17th February 2020.

36. Mr Morgan was referred to Respondent's Document 7 which he said appeared to be an invoice from BS Property Care dated 18th August 2019 and he was asked to comment on it. He said that Mr Blair has confirmed to him that no work described in the invoice had been done. The invoice referred to the refitting of a bathroom and repair to chipboard flooring and was for the sum of £3,150. Mr Morgan said that there was no complaint made about the Property in August 2019, that no approval was sought from him to carry out such work and that he did not believe that the Respondent would have been able to pay for such work given the fact that, at that time, Shahid Hanif was advising that there were difficulties in the rent being paid. Mr Morgan was referred to Applicant's documents 16(f), 16(g) and 16(h) which he said were text messages between his

wife and Rani Hanif from 12th August 2019 to 22nd August 2019 and which demonstrated that Mrs Morgan was advising that, if the arrears were not settled, action for recovery would proceed. He said that the responses from Rani Hanif were consistent with the fact that the tenant could not afford to pay the rent and made no reference to work being done to a bathroom. On 13th August 2019, Rani Hanif said:

“Lisa I have my self applied for a credit card hopefully it should come so I can give u some payment to make things easier”

On 19th August Rani Hanif said:

“Am in the case arranging some money.”

37. Mr Morgan said that he did not believe that any reasonable person needing to do a repair and in financial difficulties would not have contacted the landlord rather than committing to work costing £3,150.

Mr Morgan said that there was nothing in the invoice referring to 340 Albert Drive and he said that it is addressed to Shamila Hanif at 318 Langside Road, Glasgow, G42 8XW. He said that this is the Respondent’s daughter.

38. Mr Morgan was referred to Respondent’s Document 8. He said that this appeared to be a quotation from BS Property Care and that it appears to be for works in a kitchen. He said that it is undated, is addressed to “Shamila” and does not refer to any property. Mr Morgan said that Mr Blair’s report at Applicant’s Document 25(a) states that damage to the kitchen at the Property has been caused by an infestation of vermin and, that as a consequence the kitchen would require to be replaced. He said that this report followed upon Mr Blair’s visit to the Property on 26th February 2020. He said that the inspection had followed concerns about the electrics and gas. He said that Mr Blair had been accompanied by an electrician who had made the electrics safe.

39. Mr Morgan said that the Respondent had made representations to the Council about the Property and that he had been contacted by the environmental health department who had indicated that no action would be taken against him but that they did have concerns that the Property was being used to prepare food for commercial purposes.

40. Mr Morgan said that the Property was worth about £600,000 and that he was concerned at its deterioration. He said that he always attended to any repairs requiring to be done to his properties. He said that he and his family intend to move into the Property when he gets possession of it. He said that, although not written into the lease, there had been an understanding that the Respondent

would carry out some repairs such as internal decoration and clearance of gutters. Mr Morgan said that the Property had originally been purchased to refurbish and sell but that, with the property crash, the strategy had to be rethought and it was decided to let it out.

41. Mr Morgan said that Ronnie McKechnie, a plumber, had accompanied Mr Blair when he had inspected the Property on 26th February 2020 and had taken the photographs number 24(a), 24(b), 24(c) and 24(d) of the Applicant's bundle. He said that 24(a) shows a watermark from a previous leak and that the other three photographs show the extent to rubbish within the Property. He said that there was so much mess that Mr McKechnie had trouble getting access to all of the Property.

42. Mr Morgan wanted to respond to Mr Hanif's statement that he had had four years of problems with the Property. He said that there had been no reports of repairs which were not then done and that the Respondent had agreed that the rent be increased to £1,300 in 2016 and that every month until August 2018 the rent had more or less been paid. He said that this did not equate with what Mr Hanif had said about there being problems with the Property for four years. He said that he considers that the rent was not paid because of the Respondent's financial position rather than for any reason relating to repairs. Mr Morgan said that he is aware that some repairs need to be done. He said that the Respondent had disconnected the cooker himself and that the kitchen units require to be replaced because the Respondent has allowed an infestation of rats.

43. Mr Morgan said that he had tried to get access to the Property for the necessary gas and electrical certification. He said that he was unaware that application could be made to the First-tier Tribunal for assistance with obtaining access. He said that he knows that he will need to do a significant amount of work to the Property when it is vacated.

Mr Morgan said that the Respondent and his family have attacked his reputation and suggested that he is an unfit landlord and that this is not the case.

44. Mr Morgan was referred to Applicant's document 11(a) to 11(d). He said that this showed statements from his wife's NatWest bank account where rental payments were paid into. He said that they showed that the initial rent had been £1,000 and that the last payment for that amount was paid in August 2016 and that thereafter the statement shows that the sum of £1,300 per month was paid.

Mr Morgan said that the Respondent has said that rent was not paid because of repairs needing to be done to the Property. Mr Morgan said that his wife had

received a number of text messages from members of the Respondent's family stating that they were struggling financially. He said that he found Shahid Hanif hostile in his attitude.

Mrs Lisa Morgan's evidence

45. Mrs Morgan said that she had more to do with the Respondent's wife who is called Rani. She said that it has been a number of years since she had any contact with the Respondent. She said that she communicated with her by text and whatsapp messages. She said that, at one point, the Respondent's son, Shahid Rani took over responsibility for communicating on rental matters.

46. Mrs Morgan was referred to various text and whatsapp messages.

Applicant's Bundle 16

Mrs Morgan explained that these are Whatsapp messages between Rani Hanif and her.

16(a): Mrs Morgan's message of 17 December 2018 to Rani Hanif states that there are arrears of £2,050. Mrs Morgan said that this was at a point where there were significant issues with arrears. She said that intermittent payments were made between then and July 2019 but the arrears were not caught up.

This also shows a message from Mrs Morgan to Rani Hanif from 11th July 2019:

"Shahid has ensured us money will be transferred tomorrow to stop proceedings. He has said that he will be happy to meet up and handover the keys for the house if he is unable to pay arrears. I am just wanting to keep you in the loop as its yourselves in the house."

Mrs Morgan explained that this message was sent at a time where consideration was being given to start proceedings for recovery and the Applicant's solicitor had been instructed.

16 (b) Mrs Morgan sent a message to Rani Hanif on 22nd July indicating that payment of £800 had been received. It goes on to say "When will remaining £3,020 and this month's rent of £1,300 be paid. Now £4,320 in arrears. Until all arrears paid up to date- my solicitor will continue with proceedings." Rani Hanif responds: "Don't worry it will be paid."

Mrs Morgan was referred further to the Whatsapp messages and confirmed that they show that she was telling Rani Hanif that action for possession would have to continue.

16(d) shows a message from Mrs Morgan to Rani Hanif indicating that arrears are currently £4,320 and, in ten days, will be £5,620.

This elicits the following response from Rani Hanif:

“I am really sorry Lisa for all this stress u have been through for this we have been let down with our money someone had owed me that’s wat the problem came from but we are willing to pay u off every penny that we owe but am very sad wats happened.”

16(f) shows a message from Mrs Morgan to Rani Hanif stating that she has met with her solicitor and that she has been advised to proceed with eviction and recovery of arrears and giving a last opportunity for matters to be resolved.

This elicits a response from Rani Hanif:

“I will speak to my husband and get things sorted lisa soon as don’t worry am very worried and stressed myself I will get back to u soon as.”

16(g) shows a message from Rani Hanif stating that she has applied for a credit card and that a payment will be forthcoming. Mrs Morgan said that nothing was paid.

16(h) shows that, on 19th August 2019, Rani Hanif sent a message stating that *“Am in the case arranging some money.”*

16(i) shows a message from Rani Hanif stating that her sister is willing to help and asking until the end of September when *“I will hopefully pay u the balance by then...”*

Mrs Morgan stated that her response shown was confirmation that the solicitor had started proceedings.

16(k) shows a message from Rani Hanif on 31st August 2019 *“Don’t worry someone is hoping to give me money to borrow end of September.”*

16(l) shows a message from Rani Hanif on 2nd September 2019 *“Shahid and I are trying our best to settle this as soon. As possible Lisa so please just give us a little time hoping to give u some money soon u will need to understand us please.”*

47. Mrs Morgan said that the messages shown on 16 (m), 16 (n) were about trying to get access. She said that she was visiting someone in the vicinity of the Property in September 2019 and called at it when she saw cars in the drive and realised that someone must be in. She spoke to Shahid Hanif, and said that her message to Rani Hanif on 16 (o) reflects what occurred:

“Shahid didn’t seem to realise that the lease expires tomorrow. I’ve explained to him that we can’t hold off any longer and it’s all in the solicitor’s hands now. Again I explained that payment of arrears could solve this. He promised me he would sort something today and phone me.....I’ll be over with new letting agents at some point to get a few things sorted.”

48. Mrs Morgan said that there were always problems getting access to the house and that she wanted access at that point to carry out an inspection. She was referred to Applicant’s Documents 16 (p),16(q),16(r), 16(s),16(t) and 16(u) and she confirmed that these were messages to Rani Hanif between 9th September and 26th November 2019 with regard to arrears and obtaining access. She said that these messages were not responded to. Mrs Morgan said that numerous attempts had been made over many months to attempt to get access to the Property and that this was only achieved on 17th February 2020 when the tribunal had indicated that access should be given.

49. Applicant’s Bundle 18

Mrs Morgan said that this was a collection of text messages between the Respondent’s son, Shahid Hanif and her. She said that it seemed that he had taken on responsibility for paying the rent and she said that she did not think he had been living in the Property but that he may be living there now. She said that when she visited the Property in September 2019, he had answered the door. Mrs Morgan said that the original references in her bank account for payment of rent was “Rani” and that this changed when she believed the Respondent’s son was making the payment. She said that Rani Hanif had implied that her son would be helping to pay the rent.

50. Mrs Morgan was referred to Applicant’s Documents 18(d) and 18(e). She said that these showed photographs of water damage to a ceiling and issues in a room which the Respondent used as an ironing store.

She said that the message sent by Shahid Hanif on 21st July 2018 referred to the photographs:

“These are the issues that my mum has been waiting over two years to be resolved can you please do something about these I’m sorry I couldn’t get the rent in yesterday as we were at a funeral but will sort it out Monday thanks Shahid.”

Mrs Morgan had responded on the same day:

“Hi! These were all fixed either last year or year before. I’ll get Tommy out to look at it.”

Mrs Morgan said that the “Tommy” referred to is Tommy Blair, a contractor who had done a lot of work on the Property and who specifically had completed a number of items the previous year. Mrs Morgan said that, when she sent the message to Shahid Ranif on 21st July 2018, she believed that to be the case and now was certain that any works referred to by Shaheed Ranif had been done. Mrs Morgan said that there had never been any reports of repairs which had not been responded to.

51. Mrs Morgan said that Shahid had communicated on 26th August 2018 that the rent had not been paid because of problems with his bank account.

She referred to the text message sent by Shahid Ranif on 26th August 2018 (Applicant’s Document 18 (g):

“Hi I’m so sorry for not putting in rent on Friday as my account has been froze due to fraudulent activity as some tried to take money out of my account I’m hoping to have this resolved on Monday but as soon as my account is back up and running I’ll transfer the money sorry for any inconvenience caused there’s nothing I can do till my account is bsk to normal sorry.”

Mrs Morgan said that no money was forthcoming and she said that the text messages which followed showed various unfulfilled promises of payment:

Applicant’s Document 18(g) on 28th August 2018:

“I’ve been to bank 3 times today there saying couple of days and account should be ok.”

Applicant’s Document 18(h) on 28th August 2018:

“I’ll have the money in tomorrow 110%.”

Mrs Morgan said that no payment was made and she referred to 18(j) and the message from Shahid Ranif on 25th September 2018:

“Hi sorry for late reply I’m still waiting on my wages going into bank I don’t know why there not in I’ve phoned my works office and there checking it out for me sorry again.”

Mrs Morgan referred to Applicant’s Document 18(k) which was a message sent by Shahid Ranif on 28th September 2018:

“I’m in some financial difficulty just and do apologise for inconvenience caused I’ve changed jobs and work hasn’t paid me as yet and I don’t know why I promise not to let this happen next month sorry again.”

52. Mrs Morgan referred to the text message from her to Shahid Hanif on 5th October 2018 and to the response (18k) and 18(l) She also referred to the messages shown in 18(l) and 18 (m) on 6th October 2018:

Mrs Morgan- *“Can you ensure rent is paid in today.”*

Shahid Hanif- *“Can you also ensure our leaks and the dampness in this house is fixed.”* He also messaged on 6th October 2018 (Applicant’s document 18(l))- *“Lisa your rent money is ready as I said but I’m not letting it transfer till these problems are fixed I’m not wanting to get council as you know what they would do I’m just trying to civil if you want I’ll get all the issues fixed and send you the bill.”*

Mrs Morgan said that this was the first she had heard of any issues with the Property which would lead the tenant to stop paying rent.

She said that her husband responded to this by text from her phone on the same date (Applicant’s document 18(l) and 18(m)):

“This is iain Morgan please be advised that we will not be renewing this lease and our solicitor will write accordingly giving you notice. Every month is the same story and we have been extremely patient. Last month is the same story and we have been extremely patient. Last time repairs were paid for despite damage being due to fat being poured down and blocking drains. We have also requested access which has not been forthcoming. Enough is enough. Also note that we will be contacting council to advise of the situation. The rent was agreed way below market rate on basis that your parents did any running repairs. You have until 10am Monday morning to sort this...”

53. She said that the response from Shahid Hanif was on the same date and is shown on Applicant’s documents 18(m) and 18(n):

“So the dampness in the house ceiling collapsed cracks in the roof above the staircase which has never been fixed is our responsibility?????”

“We have spent thousands on the house including brand new toilet tiled it new toilet sink new pcp board in boiler sorted the electrics changed all sockets that were damaged but it’s not our job to stop this water from coming in the house we’ll take care of most issues but you have to at least have the house water tight you fix the problems and I will guarantee every 21st before midnight you will have the rent in your account and if it’s late by even a day feel free to charge me bank charges uses needs to come and go with things not just leave us in this situation it’s been going on for far too long and for fat that’s not from our house as the drain is shared with the neighbours next door.”

54. Mrs Morgan said that Shahid Hanif sent her a text message on the same day (6th October) stating that she was to disregard what he had said and that the rent would be paid (Applicant's Document 18(o)):

“Spoke to mum she says she can't be bothered with the stress so forget everything I said I'll have the rent in later today and any future repairs I'll deal with them and won't bother use again and I'll also make sure the rent is in on time each month might be a day before or after depending on the weekend sorry again we will just leave this at this.”

Mrs Morgan said that the reference in a text message to a reduced rent was because the rent being charged was below market value and that similar properties were being let at £2,000 per month. Mrs Morgan said that she and her husband had been happy with this situation as long as the rent was being paid. She said that the Respondent and his family had been in the Property for such a long time and that, up until 2018, they had been reasonable tenants. She said that Mr Hanif had always been happy to do internal repairs and wanted to do these. She said that she and her husband had been told by Mr Hanif that he would be interested in buying the Property if it was being sold.

55. Mrs Morgan was referred to Applicant's Document 17 in the Applicant's bundle. She said that this is a series of Whatsapp messages between Shahid Ranif and herself. She said that these show that Shahid Ranif was promising that payment of rent and rent arrears would be made.

Mrs Morgan referred to Applicant's Document 17(e) where, in response to her message of 14th December 2018, Shahid Ranif had said:

“Give me till Monday please” and on 17th December 2018 *“I'm honestly stressed out about this I promise to have this resolved as soon as possibly Lisa..... I've told her (mother) I'll sort it out I'll have money in in Friday regardless.”*

56. Mrs Morgan said that, in 2019, promises were being made that Shahid Hanif was obtaining a loan to be used for payment of arrears and she referred to Applicant's Document 17(f) where Shahid Ranif said on 12th July 2019:

“My loan has went through I've been told I'll have it all processed in 2,3 weeks so I'm going to use that to have it all up to date so sorry about this I know you have bills to pay too.”

Mrs Morgan said that some money was paid and she referred to her Whatsapp message to Shahid Hanif on 22nd July 2019 (Applicant's Document 17(f)):

“Hi! Got the £800 last Friday. When will remaining £3,020 and this month’s rent of £1,300 be paid. Now £4,320 in arrears. Until all arrears paid up to date- my solicitor will continue to proceed with actions.”

Mrs Morgan said that this was reference to the fact that solicitors had been instructed to recover the property because of non payment of rent.

57. She said that she and her husband were seeking to get access to the Property not only in relation to getting the necessary gas and electrical certificates but also for letting agents.

She said that the message from Shahid Ranif on 30th July referred to the request for access (Applicant’s Document 17(g)):

“No one is getting access... Yes no one is getting access the rent will be sorted soon so do not give me this threat again.”

58. Mrs Morgan said that she was not exactly sure why the rent was unpaid. She thought that the Hanif family businesses were not going well and that Shahid Hanif had lost his job and had various financial issues. She said that at that time she had contacted a few letting agents to see what had to be done before the property was let out. She said that there were always promises that the rent would be paid and she said that she firmly believed that non payment was as a result of the financial difficulties the Respondent and his family were experiencing. Mrs Morgan referred to Applicant’s Document 17(i) which showed exchanges of Whatsapp messages between Shahid Ranif and her on 2nd September 2019:

Mrs Morgan- “Arrears now at £5620. Next £1,300 due 20/9/19.”

Shahid Ranif- “This is not good we have decided to sell our house in Pakistan and get all debt cleared as we are really under pressure with a lot of things will deposit money on the 13th 1 million percent we hope to have everything cleared by the 1st week of October we will receive a deposit from he buying party end of this month and hand it straight to you were expecting £10,000 upfront so that should clear you and our other small debts it’s the only option we have mum hs tried credit cards and ask family but everyone seems to let us down so this is what we are going to do I’m extremely sorry of putting you through this but we will be clear soon.”

59. Mrs Morgan referred to the Applicant’s Documents 17(j) to 17(m) and said that these showed messages she was sending to Shahid Hanif between September and November 2019 chasing payment of rent and arrears as well as getting access to the Property but that there was no response.

Mrs Morgan said that it was not a situation that she and her husband could allow to continue. She said that Mr Morgan did not keep well and found it stressful that he was being denied access to the Property and was not being paid the rent that was due. She said that she was having to work extra to help to make up the shortfall in the family's finances. She said that the monthly outgoings for the Property is somewhere in the region of £3,000. She said that, when the Property had been purchased, it had been the intention to refurbish and sell it and that the decision had then been taken to rent it out.

60. Mrs Morgan said that she had been in Albert Drive in September 2019 and had gone to the Property and had spoken to Shahid Hanif who had told her that he did not realise that the lease was being brought to an end by virtue of a notice to quit which had been served. She said that he told her that he would sort things out and get money paid and that he had inferred that things were difficult financially for the family. She said that he had told her that, if an application was made to the Tribunal for payment, no money would be recovered.

Mrs Morgan said that the last attempt at contact she had with Rani Hanif was on 26th November 2019. She said that she had sent her a message but got no response.

61. Mrs Morgan said that Tommy Blair was the contractor who carried out work to the Property and she was referred to documents 20 (a), 20(b) and 20(c) of the Applicant's bundle. She said that these documents constitute a report from Tommy Blair with regard to the works which had had carried out in the Property in the second week of April 2017. She said that, what normally happened when any work was needing done to the Property was that her husband would speak to Mr Blair and that arrangements would be made.

62. Mrs Morgan was referred to Respondent's Bundle, Document 2 and she said that this would appear to be an invoice from BS Property Care for work carried out to the Property and is dated 7th April 2018. She said that she had become aware of this document only when it had been lodged in connection with the tribunal proceedings. Mrs Morgan said that, at no time, was she aware that the work detailed in this invoice had been done. She said that, at the end of 2018, Shahid Hanif had stated that he would get work done and deduct from what was owed for rent. She said that she would have expected him to refer to this invoice which was dated from April 2018. She said that she found it strange that a tenant would spend £4,650 on a property which he did not own. Mrs Morgan was referred to Document 3 of the Respondent's bundle and she said this was an invoice from BS Property Care dated 4th June 2017 for £4,250 for work for

replacement of a toilet and sink and tiling in the Property. She said that she found it strange that a tenant would carry out such work and that she would have expected reference to be made to it prior to the tribunal proceedings especially when there was an issue about non payment of rent.

63. Mrs Morgan said that Document 4 (a) of the Respondent's bundle appeared to show photographs of what the tenant uses as an ironing store. She said that, as far as she was concerned, these were from before repairs were carried out by Mr Blair. She said that he has replaced the ceiling because pigeons belonging to the Respondent had been nesting in the cavity above it.

64. Mrs Morgan was referred to Documents 4(b) to 4(e) of the Respondent's bundle and said that these showed exchanges of messages between Rani Hanif and her from 2014 and 2015 with regard to repairs to the Property. She said that any repairs requiring to be done were completed at that time. She said that a contractor Tony Woods attended to what needed to be done at that time.

Mrs Morgan was referred to Documents 4(f) and 4(g) of the Respondent's bundle and she said that these were messages between Rani Hanif and her from 2018 relating to repairs relating to the cooker not working. Mrs Morgan said that she had told Rani Hanif that if she wanted to get the repair done the cost could be deducted from what was owed. She referred to her message to Rani Hanif on 18th May which is contained in Document 4(g):

"Spoke to lain if u get job fixed yourself. We have accrued a lot of bank charges for Feb and April when rent was 2 weeks late."

65. Mrs Morgan referred to Document 22 of the Applicant's bundle and said that this was an invoice from SMR services for £579.34 relating to work instructed by her husband to be carried out to the Property in response to the issues raised by Rani Hanif in 2014/2015.

Mrs Morgan was referred to Document 7 in the Respondent's bundle. She said that this appeared to be in invoice from BS Property Care dated 18th August 2019 for the sum of £3,150 in respect of work to a bathroom. Mrs Morgan said that the invoice was addressed to Shamila Hanif, 318 Langside Road, Glasgow, G42 8XW. She said that she thought that Shamila Hanif, the daughter of the Respondent, lived at that address.

66. Mrs Morgan was referred to Documents 24 (a), 24(b), 24(c) and 24 (d) of the Applicant's bundle. She said that these are photographs taken of rooms in the Property which had been taken by Mr McKechnie, a plumber who had accessed the Property on 17th February 2020 along with Mr Blair. She said that 24 (a)

shows water staining from a previous leak and that the other three photographs show the amount of rubbish within the Property and the difficulty anyone would have in moving round the Property because of the amount there was.

67. Mrs Morgan was referred to Document 25 (a) and 25(b) and she said that this was a report from Mr Blair dated 26th February 2020 which he had prepared after he had got access to the Property on 17th February 2020. She said that the purpose of the inspection was for Mr Blair to identify if any work was required to be done to protect the Property and also for him to review the invoices lodged by the Respondent and for him to identify if any work had been done to the Property by the Respondent. She said that the report confirms that no work had been done.

68. Mrs Morgan referred to Document 23 of the Applicant's bundle She said that this was a letter from Rentahome (Scotland) Ltd, letting agents which stated that they manage two properties for Mr and Mrs Morgan and which are to a high standard. It states that any repairs ever reported are attended to within 24/48 hours. She said that this reflected how she and her husband deal with matters and she said that, in relation to the Property, any repairs reported were always dealt with.

69. Mrs Morgan said that, at that date (22nd October 2020) the rent arrears amounted to £23,910.

She said that it was her view that the Respondent cannot afford to stay in the Property and that this is because of the financial issues he and his family have.

Mr Thomas Blair's evidence

70. Mr Thomas Dryden Blair gave evidence. He said that he traded as T.D. Blair, Landscape and Drainage. He said that he undertakes a range of building work and "can do anything from small jobs to building a house." He said that he had known Mr Morgan for some time and that, for some years, he had carried out work at 340 Albert Drive. He said that he had been attending the Property for eight, perhaps ten years. He said that when he was asked to attend the Property there always seemed to be issues in getting access and it would sometimes take three, four or five attempts to achieve this. He said that this seemed to be as a result of the Respondent's reluctance to allow access. He said that he knew the Property well and described it as a substantial stone built semi -detached house. He said that it had a basement and an annexe which the tenant used as a store. He said that, on visits to the Property, this store contained rubbish and bags of rotten food. Mr Blair said that he had frequently had to attend the Property to

clear gutters. He said that the gutters and downpipes had to be cleared more often than would be expected because the tenant kept a great number of pigeons who carried debris onto the roof and gutter areas and that their droppings also caused blockages. He said that there were “hundreds” of pigeons.

71. Mr Blair said that he was asked to attend at the Property in April 2017 to deal with a number of issues. He said that there had been complaints about water ingress and blocked drains. He said that he erected scaffolding to allow access to the roof and gutters. He said that he was asked to report on what he found and to carry out necessary works. He said that he took photographs at the time.

Mr Blair confirmed that Applicant’s documents 20(a),20(b) and 20(c) are his letter to Mr Morgan dated 6th February 2020 and a report detailing the work he had done in the first week of April 2017

72. Mr Blair said that the Property had a large decorative dome which allowed light to enter the stairwell. He said that there was a crack in this dome which may have occurred as much as a hundred years previously. He said that there was sealant on this crack. He said that around the dome was lead flashing and that tar sealant had previously been torched on over this. He said that he checked the dome area and found that the previous repair was sound but that he cleared the area around the dome and applied additional sealant. He said that the area was tested with a hose and was found to be watertight. Mr Blair was referred to Applicant’s documents 20(d), 20(e), 20(f) and 20(g), and confirmed that these are photographs showing the dome and surrounding area.

73. Mr Blair said that there had been a complaint of water ingress to a front bedroom. He said that he found this to be caused by blocked gutters. He said that the front gutters were full of debris and he said that this was due to rubbish, debris and nesting materials being carried by the pigeons which were kept by the tenant. He said that, if the tenant had maintained the gutters to a reasonable standard, there would not have been an issue. He said that the gutters are larger than normal and he agreed that Applicant’s Document 20(j) is a photograph of the gutters to the front of the Property.

74. Mr Blair said that the gutter to the rear of the Property was also blocked with debris and that Applicant’s Document 20(h) is a photograph which showed this and that Applicant’s Document 20(i) is a photograph showing the gutter area after it had been cleared.

Mr Blair said that the gutters in the Property are larger and wider than usual and need to be kept clear to prevent a build up of water. He said that, if this was not done, damage would be caused to the structure of the Property. Mr Blair said that he ensured that the gutters and down pipes were clear. He said that he also replaced a section of wood and he explained that there were dangers from pigeons trying to nest in the attic areas and that he blocked every hole where he thought birds could gain access.

Mr Blair confirmed that Applicant's Document 20(l) is a photograph which he took of the outhouse where the pigeons were kept. He said that it showed nesting boxes and a number of birds but he said that there were "hundreds" more flying around outside and sitting on the roof when he took the photograph. Mr Blair said that, when he was last at the Property on 17th February 2020, the pigeons had gone.

75. Mr Blair said that, when he was at the Property in April 2017, he also attended to what was reported as a blocked drain and a shower which was backing up. He explained that the drainage for the Property ran through pipes which can be accessed from the basement. He said that he cut a cast iron drainage pipe in the basement and found it choked full of grease. He said that he considered this to be caused by cooking fat being put down the drain and he said that, in his experience, that level of grease would only be found in commercial catering premises. He said that the drain was "blocked solid" and that he had to install a replacement section of pipe. He said that he had shown this to the tenant and had advised him not to put fat down the drain.

76. Mr Blair said that the tenant had removed a substantial sandstone block from the structure of the house and that the internal wall had also been removed at that place which was the living room. He said that the tenant had told him that it was to allow his cat to enter and leave the Property. He said that this was replaced.

77. Mr Blair said that rooms in the Property were full of rubbish and he confirmed that Applicant's Document 20(k) is a photograph he took showing rubbish in the living room. He said that there was so much rubbish that it prevented him from walking across the floor. He said that there were also large net bags full of some kind of vegetable. He said that the basement was also full of rubbish, so much so that it had to be cleared to allow him access to work. He said that he was sure that such conditions encouraged vermin. Mr Blair confirmed that, when visiting the Property over many years, he was aware of the

presence of children and he was not sure if they were living there but he thought they might be.

78. Mr Blair said that he formed the view that the Property was being used for commercial catering purposes and he said that he came to that view because of the size of the cooking pots in the kitchen. He described a pot sitting on the hob which was so large that it covered all the cooking rings.

79. Mr Blair said that he left a full set of ladders with the tenant so that he could attend to future maintenance of the gutters. He said that he has not collected these.

80. Mr Blair was referred to Respondent's Document 4 and he said that it is a photograph of the small gas boiler cupboard which is directly below the shower. He said that any issues in this area were repaired in April 2017.

81. Mr Blair was referred to Respondent's Document 2. He said that this appeared to be an invoice dated 7th April 2018 from BS Property Care. He said the work detailed in the invoice was all work done or checked by him in April 2017 and he did not accept that the invoice was genuine.

Mr Blair said that he had attended to Property on 17th February 2020 and that he had gone up to the roof and he was able to confirm that no additional work had been done. He said that no work had been done to the downstairs cupboard. He said that, even if the work detailed in the invoice had been done, the sum of £4,650 stated on it was "ridiculous" and he said that it was excessive.

82. Mr Blair was referred to Respondent's Document 3. He said that this appears to be an invoice from BS Property Care dated 11th June 2017 for £5,250 in respect of stripping out and refitting the downstairs bathroom. Mr Blair described this as "nonsense." He said that, from his inspection on 17th February 2020, he was able to say that no such work had been done.

83. Mr Blair was referred to Applicant's Documents 18(d) and 18(e) and he said that these showed photographs of water damage to the ceiling of the bedroom which occurred before the gutters had been cleared in 2017 and the condition of the area around the fan which was taken prior to the work done in 2017.

84. Mr Blair was referred to Applicant's document 25(a). He said that this was a letter which he had sent to Mr Morgan following upon his inspection of the Property on 17th February 2020. He said that it stated that he found the kitchen to be filthy with cooking grease and left over food. He confirmed that his letter stated that the kitchen units had been damaged by an infestation of rats. He said that he found the kitchen units to be damaged by what he took to be rats and

described them as being “chewed to bits.” He said that expanding foam had been used inside the units and on the kickboards and he said that a woman living in the house told him that this was to “stop the mice.”

85. Mr Blair said that electrical switches had been removed by the tenant and that the electrician who accompanied him had made them safe.

Mr Blair said that he looked at the ceiling in the bedroom and that there was no new damage and that all that was needed was decoration. He said that there was no water ingress at that area or around the dome.

Mr Blair said that he found that the gutters and downpipes were once more blocked and needed to be cleared.

86. Mr Blair was referred to the Respondent’s Documents 7 and 8. He said that number 7 appeared to be an invoice from BS Property Care dated 25th August 2020 for £3,150 in respect of stripping out a bathroom suite, carrying out work to joists and walls and fitting a new bathroom suite. Mr Blair said that he could confirm from his inspection of 17th February 2020 that no such work has been done. He said that the invoice referred to a chipboard floor and he said that there was no such flooring in the Property. Mr Blair said that document 8 appeared to be an undated quotation from BS Property Care for £2,600 in respect of work in respect of stripping and refitting of a kitchen. He said that the quotation refers to dampness ingress and he said that there was no such ingress in the kitchen of the Property.

Mr Blair said that he considered that any current issues with the Property are as a result of the way the occupiers are living. He said that problems have been caused by rubbish and food waste being kept in the Property.

Submissions of Ms Bain

Repossession.

87. 2016 Lease

Miss Bain said that she was seeking eviction of the Respondent from the Property. She said that, at the time of submitting the application, she was relying on the 2016 lease. She asked the Tribunal to issue an order for possession on the basis of that lease. She said that Mrs Morgan’s bank statements which she had spoken to show that the rent was increased to £1,300 on September 2016 which coincided with the date of entry under the 2016 lease.

She accepted that there is not a copy of a signed 2016 lease and that Mrs Morgan had given evidence that she has no recollection of the signed lease being returned. She said that an unsigned copy of the lease had been lodged. Ms Bain said that the date of entry on that lease was 10th September 2016, that it was for a year until 9th September 2017 and that therefore the ish date was 9th September. She referred to the Notice to Quit at Applicant's Document number 3 which she said required the Respondent to leave on 9th September 2019.

Ms Bain said that an AT5 had been sent to the Respondent with the lease and that this constituted a short assured tenancy under the 1988 Act and that the Applicant was entitled to possession under Section 33 of that Act.

Ms Bain said that her alternative position on the 2016 Act was that recovery should be granted under Section 18 of the 1988 Act. She said that the Respondent would be under no doubt that, if he did not pay the rent, he would be evicted. Ms Bain said that her position is that the Respondent had no valid reason not to pay the rent and that she would address the tribunal on that matter in due course. She said that clause 11 of the 2016 lease refers to grounds 2-8 and 9-16 of Schedule 5 of the 1988 Act. Ms Bain said that the Respondent is a man of business and she referred to documents she had lodged from Companies House showing that the respondent is a director of two companies. Ms Bain said that she is relying on Grounds 8, 11 and 12 of Schedule 5 to the 1988 Act.

88. 2011 Lease

Ms Bain said that her esto position was that the 2011 lease was the lease under which the Respondent had contractual obligations to pay rent and that the tribunal had a signed copy of that lease.

Ms Bain said that the Tribunal had allowed the application to be amended to include the 2011 lease.

Ms Bain referred the tribunal to the terms of the 2011 lease which stated in clause 1 that it is a short assured tenancy and that by signing the lease and, in terms of clause 1, the Respondent acknowledged that he had received the AT5 Form. She said that the lease referred to grounds 2,8 or 9 to 17 of Schedule 5 to the 1988 Act and that this gave the Respondent fair notice that, if the rent was not paid, action could proceed for recovery of the Property.

Ms Bain said that a notice to Quit in respect of the 2011 Act had been served on 21st January 2020 and that it required the Respondent to leave the Property by

2nd October 2020. Ms Bain said that the ish was 2nd October 2020 and that the service of the notice to quit had brought the lease to an end and that there was no tacit relocation. Ms Bain addressed the fact that this notice to quit had been served after the application had been submitted to the Tribunal. She said that there was no prejudice to the Respondent who, on receiving intimation of the application, knew that the Applicant was seeking recovery of the Property. She said that service of the notice to quit under the 2011 Act had prevented the Tribunal from having to consider a fresh application and that, once the Tribunal had allowed the application to be amended, any defects there might have been in serving the notice to quit after the date of the application had been remedied.

89. Civil Case

Ms Bain submitted that the Respondent had never sought to argue that the rent had been paid. His position is that the rent did not fall to be paid because of repairs requiring to be done to the Property. She said that the Respondent had failed to produce evidence that this was the case. She said that, in relation to the invoices lodged in support of the Respondent's position, he had been directed to produce certain information but had not done so.

Ms Bain asked the tribunal to accept the evidence of Mr and Mrs Morgan and Mr Blair as credible. She said that Mr Blair had demonstrated an extensive knowledge of the Property and she asked the Tribunal to accept his evidence with regard to the work done to the Property as well as the work not done. She asked the tribunal to accept that the Respondent had not carried out the work referred to in the BS Property Care invoices and that any damage to the Property had been caused by the Respondent and his family.

Ms Bain said that there was evidence from Mr Blair and Mr and Mrs Morgan that repairs had been carried out to the Property when required.

90. Ms Bain asked the tribunal to have regard to the cases of *Renfrew District Council v. Gray* 1987 S.L.T.(Sh.Ct.)70, *William Campbell Muir v John McIntyre and Others* (1887) 14R. 470 and *Fingland v Mitchell and Howie* 1926 S.C.319 (1926)

91. Ms Bain asked the tribunal to consider it significant that Mr Hanif had stated that he was unable to pay any rent and that he had not set money aside for this. She said that any tenant seeking abatement of rent in respect of a property not being in good condition was obliged to intimate this to a landlord and to state what abatement was being sought. She said that any tenant withholding rent

until repairs were completed was obliged to retain this rent and have it available to pay to a landlord once repairs had been completed. She asked the tribunal to accept that the messages sent by Rani Hanif and Shahid Hanif to Mrs Morgan were clear evidence that the reason for the rent not being paid was due to financial issues which the Respondent had.

92. Ms Bain asked the tribunal to have regard to the fact that the Respondent was asking it to accept that he had paid money for repair to the Property when at the same time members of his family were advising that he had financial difficulties.

Ms Bain submitted that Mr Hanif's conduct in connection with the proceedings should be taken into consideration. She said that he had consistently sought to have Hearings postponed, that he could have got representation and that he failed to do so. She said that his failure in complying with the Direction dated 4th August 2020 was also significant.

Ms Bain addressed the fact that the latest rent statement showing a balance due of £23,910 had not been intimated to the Respondent despite it having been lodged with the Tribunal office. She said that Mr Hanif knew what the monthly rent was, that he had never sought to argue that any sum in previous rent statements was inaccurate and that he must therefore know what the current liability is. It had also been stated in his presence before he left the Hearing and he did not query it.

Ms Bain said that the Respondent had never produced a figure with regard to any abatement of rent he was seeking and had stated that he had not retained funds for rent.

93. Written Representations of Ms Cochrane on behalf of the Respondent.

The tribunal considered the representations made by Ms Cochrane and submitted when she was still acting for the Respondent.

The representations dealt with the Applicant's case under Rule 65 and Rule 66.

In respect of Rule 65, the representations state that the terms of the 2011 agreement are insufficient to satisfy the terms of Section 18(6) of the 1988 Act. They state that the notice served on the Respondent seeks to bring the tenancy to an end on Grounds 8,11 or 12 of schedule 5 of the 1988 Act.

The representations refer to the cases of Royal Bank of Scotland v Boyle (1999) Hous LR 63 and Eastmoor LLP v Bulman 2014 WL 4063091. The representations state that the tenancy agreement fails to comply with the terms of Section 18 (6)

(b) of the Act as it only refers to the numbers of the grounds set out in schedule 5.

In respect of Rule 66, the representations state that the 2016 lease should be disregarded because the Applicant admits that he has never held a signed copy of the tenancy agreement. In respect of the 2011 lease, the representations state that it relocates from the original ish by tacit relocation. The representations state that the agreement is not accompanied by an AT5 and it is not known that the prescribed information was provided to the Respondent before the creation of the tenancy and that, therefore the tenancy is an assured tenancy in terms of Section 12 of the 1988 Act which means that the Applicant is not entitled to rely on Section 33 of the 1988 Act.

The representations state an esto position which is that, if the tribunal consider the lease to be a short assured tenancy, that the Notice to Quit is incompetent as it sought to bring the tenancy to an end on 9th September 2019 which was in advance of the ish date of 2nd October 2019.

Ms Cochrane submitted representations relating to repairs requiring to be carried out to the Property. Details of various repairs are detailed including leaks which started in 2012, leaking from an upstairs bathroom together with other problems with the bathroom, Leaking kitchen sink, water leaking from light fittings in the kitchen, oven not working, faulty lock on front door, bathroom tap not working in upstairs bedroom and leaks over the stairway area. The representations state that faults were reported to the Applicant or his wife.

The representations state that “on a number of occasions over the last few years the Respondent’s wife advised Lisa Morgan that the Respondent would not continue to pay the full amount of rent if the repairs were not carried out. The Applicant has failed to carry out the repairs.”

The representations state that BS Property Care have carried out works to the Property which are described as “essential repairs.” The representations state that the Respondent has paid £12,050 to BS Property Care and that a quotation for further work costing £2,600 has been obtained from that company.

Discussion

94. The 2016 Lease

The tribunal had a copy of an unsigned lease dated September 2016. It accepted the evidence of Mr and Mrs Morgan in relation to it being sent to the Respondent. It also accepted their evidence that a signed lease had not been returned by the Respondent. Ms Bain submitted that the tribunal should accept that this lease

is the effective contract. A lease requires to be in writing and signed by the parties. There is no such lease from 2016. In view of the fact that the 2016 lease is not considered to be effective, its content does not require to be addressed by the tribunal.

95. The 2011 Lease

Parties are agreed that the 2011 lease is in existence and the tribunal has a signed copy of it. This is the lease which the tribunal determines is the effective contract of lease. It is in writing and it is signed. The Respondent submits that this is the effective lease.

Section 18 of the 1988 Act is referred to for its terms.

The Applicant's position, put simply, is that the Respondent should be evicted because of non payment of rent, that at least three months rent is lawfully due(Ground 8) and that the tenant has persistently delayed paying rent which has become lawfully due (Ground 11) She said that Ground12 also applied- that some rent lawfully due from the tenant is unpaid on the date on which the proceedings for possession are begun; and was in arrears at the date of service of notice of proceedings.

The tribunal had no difficulty in determining that these grounds are met in as much as at the date of service of the notice of proceedings and at the date of the Hearing , at least three months rent is lawfully due from the tenant in arrears (Ground 8) and that the tenant has persistently delayed paying rent which has become lawfully due (Ground11)

That, however is only part of the equation. For these grounds to be effective the requirements of Section 18 (6) (b) require to be met.

96. It is established law that a tenant has to have knowledge of the grounds of possession at the outset of the tenancy and there has to be more than mere reference in the lease to the grounds.

The Royal Bank of Scotland case of 1999 is significant and the statement of the Sheriff Principal in that case is relevant where he stated that "what is required is that the terms of the tenancy must make provision for it to be brought to an end on the grounds being relied upon by the landlord in terms of Schedule 5 to the Act. In my opinion this means that the essential ingredients of those conditions must be referred to in the tenancy agreement. An exact citation of these grounds would clearly suffice...." It is stated in the case that the terms of

the tenancy should make provisions for it to be brought to an end on the grounds being relied upon by the landlord.

This case was followed by Sheriff Jamieson in the case of *Eastmoor LLP v Bulman* of 2014 where he stated “ I am of the view, as with the sheriff principal in the *Royal Bank* case, that the parties must contract in such a way that the contract itself sets out the grounds for bringing to an end the lease prior to determination of its ish. It is not sufficient for the tenancy agreement merely to refer to the number of the ground in schedule 5. Best practice is to refer to its number and terms *ad longum*; if the ground is summarised, the summary must contain the “essential ingredients” of the ground in question.”

97. The tribunal had regard to the terms of the 2011 lease. It is titled ‘Short Assured Tenancy Agreement’

Clause 1 states:

“This agreement is intended to create a Short Assured tenancy as defined in Section 32 of the Housing (Scotland) Act 1988 and the Tenant acknowledges that he has received prior to the commencement of the Tenancy a notice to that effect in form AT5 that the tenancy may be brought to an end by an order of possession granted by the Sheriff on the application of the Landlord or of the heritable creditor of the landlord in any of the circumstances set out on Grounds 2,8 or 9 to 17 inclusive in Schedule 5 to the Housing (Scotland) Act 1988 provided always that the Landlord has complied with Section 19 of the Housing (Scotland) Act 1988.”

The tribunal accepted that the 2011 lease is a short assured tenancy agreement albeit one which is deficient in its terms.

The tribunal did not consider that the requirements of Section 18 (6) (b) of the 1988 Act were met by the terms of the 2011 lease and accepted the representations of Ms Cochrane in this regard and relied on the *Royal Bank* case of 1999.

98. Rule 66

Section 33 of the Act is referred to for its terms

A notice to quit in relation to the 2011 lease had been served on 21st January 2020

The tribunal accepted that the ish date is the 2nd October of any year and that the notice validly referred to the correct ish date being 2nd October 2020. The

issue is whether the tribunal could issue an order for possession where a notice to quit was served after the date of the application.

It determined that it could for the following reasons:

It had allowed the Applicant to amend its application.

Consideration had to be given as to whether or not the Respondent was prejudiced. He had knowledge of the Applicant's desire to recover the Property and the notice was timeously given in as much as it gave more than eight months' notice.

Ms Bain argued that, since the application's amendment had been allowed, it was appropriate that the Tribunal consider the Application under Rule 66 to prevent any further procedure.

The tribunal determined that the Respondent was not prejudiced by the notice being served after the date of the application and also accepted Ms Bain's submission with regard to the desirability of avoiding further procedure. In coming to its view, the tribunal had regard to Rules 2 and 3 relating to the overriding objective.

The tribunal found that the Applicant was entitled to recover the Property.

The Civil Case

99. The tribunal heard evidence from Mr and Mrs Morgan and Mr Blair. It accepted the rent statement of 22nd October 2020 to be accurate.

The tribunal accepted the evidence of Mr Morgan that £23,910 was the sum due in respect of unpaid rent and it found him credible in this regard. Mrs Morgan, who had more to do with chasing payment of rent, also confirmed this to be the sum due and the tribunal found her credible. Their evidence was also accepted with regard to the change in rental payments and the irregular nature of payment.

The tribunal found that rent of £23,910 which was contractually due had not been paid. It required to determine if the Respondent was entitled to withhold payment of any or all of it. It also required to determine if the Respondent had fair notice of the sum brought out in the latest rent statement produced by the Applicant.

100. The Respondent's position is that no rent is due because of repairs requiring to be done and also because he has spent money to carry out repairs

to the Property. Significant to the latter part of the previous statement are the invoices from BS Property Care. The Respondent had been directed to provide further information on these and had failed to do so despite the tribunal issuing a Direction and, at a Hearing, giving him clear advice on what he was required to do in respect of this Direction.

101. The tribunal found the Applicant and his witnesses to be entirely credible in relation to these invoices and the quotation. They were convincing. Mr Blair clearly had an intimate knowledge of the Property and was able to state, from his visit on 17th February 2020, that none of the works detailed in the invoices had been done. Mr and Mrs Morgan were each convincing in this regard and their particular point that it is unlikely that a tenant who could not pay rent because of financial difficulties would undertake such works was convincing as was the specific point made by Mr Morgan that one of the invoices was dated 18th August 2019 for the sum of £3,150 and which purportedly was for a bathroom was not sustainable when considered alongside contemporaneous messages from the Respondent's family at that time which indicated that there were financial issues which prevented the rent being paid. The tribunal did not consider it credible that the Respondent had not raised the issue of the bathroom with the Applicant but rather had undertaken work which had cost £3,150 and at the same time when he was being pressed for payment of rent and facing eviction.

102. Evidence was not led by the Respondent but the tribunal had the text and Whatsapp messages between the Applicant and his wife and Rani Hanif and Shahid Hanif. These had numerous statements from them stating that there were difficulties in meeting the obligation for payment of rent. The tribunal accepted that rent was not being paid because of financial difficulties and it formed that view from the content of the messages.

103 There was a reference in October 2018 from Rani Hanif that repairs required to be done but this was short lived and he withdrew his request for works to be done.

104. A tenant has to meet a high standard in relation to withholding rent or seeking abatement. It is established law that, in circumstances where a tenant decides to withhold rent, she/he has to intimate this to a landlord and set aside the rent until work is done to the tenanted property. If a tenant seeks abatement of rent there have to be steps taken by her/him to advise a landlord of what is being sought in respect of abatement.

105. Ms Bain referred the tribunal to three authorities:

Renfrew District Council v. Gray 1987 S.L.T. (Sh.Ct.)70

In this case the Sheriff Principal determined that a tenant had no obligation to pay rent where a house was uninhabitable.

The Sheriff Principal states that there are three remedies open to a tenant “who does not get full or effective possession of the subjects leased.”

The first remedy is to retain rent to secure performance. The second remedy is to claim damages if loss is incurred due to the landlord’s breach of contract and the third remedy is that the tenant can claim abatement of rent and damages for loss due to breach of the lease.

Sheriff Principal Caplan stated that the principle must be that the tenant must not be expected to pay for the benefits of occupancy which he did not enjoy.

In that case the Sheriff at first instance had found that the house was completely uninhabitable.

William Campbell Muir v John McIntyre and Others (1887) 14R. 470

In this case it was held that a tenant is not bound to pay the full rent is, during possession, through no fault of his own, he loses the beneficial enjoyment of part of the tenanted property. It states that a tenant’s right to abatement may be stated by way of defence to an action for payment of the full rent.

Fingland v Mitchell and Howie 1926 S.C.319 (1926)

In this case it was held that a landlord’s claim for rent was liquid only if he had fulfilled his obligations under the mutual contract of lease and the law which was applied was that there must be mutuality of contractual obligation and that one party to a contract can only insist on the contract being fulfilled if that party has fulfilled his/her contractual obligations. It further states that a tenant, if it is established that the lessor has not performed his contractual obligations, has a good answer to the claim.

Lord Anderson in that case states that a tenant cannot retain the rent indefinitely: “The retention of rent seems to me to be warranted for one of two purposes-(1) to act as a compulsitor on the lessor in obtaining performance by him of his contractual obligation, such as to make the house habitable; or (2) to satisfy pro tanto any counter-claim which the tenant is maintaining.”

106. Ms Cochrane had submitted the Renfrew District Council Case as an authority she would presumably have referred to had she been making submissions on behalf of the Respondent.

107. The tribunal accepted the principle that a tenant should not pay have to pay rent for a property which is uninhabitable. The Renfrew District Council case refers to the earlier case of Euman Trs.v. Smith (1930) 46 Sh. Ct. Rep 165 where the sheriff stated “While the house is not reasonably fit for human habitation the tenant is not getting his *quid pro quo* for the rent.” The Muir case sets out the principle of the possibility of abatement of rent and the Fingland case the possibility of retention of rent in the event of non performance.

In the case before the tribunal, the rent was not paid for a considerable period and this is not disputed by the Respondent. It seems to the tribunal that retention of rent is more than non- payment. It is a holding back of the rent for a purpose- to get something done or to set against a tenant’s claim. The Respondent has stated that he has not held the rent aside. He stated to the tribunal that he had no funds available to make any payment, even part payment. This appeared to the tribunal to be evidence of non payment rather than retention. Furthermore, even if it was retention of rent because of some failure of the Applicant in maintaining the Property, there was no timely intimation by the Respondent to the Landlord of the reasons rent was being retained. The only possible reference to repairs being required were the messages from Shahid Hanif on 6th October 2018 and he then effectively withdrew this representation on the same day.

The tribunal had no evidence before it which would support that contention that the property or any part of it was uninhabitable and Ms Cochrane had not suggested this to be the case in her representations although she did cite repairs which were required and others which had been paid for by the Respondent.

108. The tribunal considered whether or not the invoices from BS Property care evidenced money paid by the Respondent to carry out necessary work to the Property which could possibly be argued be set against rent. The tribunal did not consider that this was the case.

The Respondent had not sought permission from the Applicant to carry out any work. The tribunal accepted the evidence of Mr Blair that no work detailed in the invoices had been done. The Respondent had been given the opportunity to provide more information on the work referred to in the invoices and had not complied with the terms of the Direction issued by the tribunal. One of the

invoices had a different address to the Property and the quotation was undated and had no address. The tribunal found that, on the balance of probabilities, the invoices and quotation did not reflect work which had been done or that is required to be done. The tribunal therefore did not require to determine whether or not any sums required to be set against rent. The tribunal did have numerous pieces of evidence in the messages from the Respondent's family that non payment of rent was because of shortage of funds.

109. The tribunal determined that the Respondent had notice of the rent due. No payment had been made since July 2019 and it had never been part of the Respondent's case that the rent statements produced were inaccurate. The Respondent knew the monthly commitment he had for rent and it was reasonable to find that, if he did not pay rent, he would know that the sum due would increase each month. The tribunal therefore found that it was reasonable that a decree for the whole sum of £23,910 be granted

Note

The tribunal determined the applications without the full participation of the Respondent. It is accepted that this may be considered unusual. It took this decision for a combination of reasons. The overriding objective and its application as set out in Rules 2 and 3 was significant.

These were applications for recovery of a property and payment of rent arrears which, at the date of determination amounted to £23,910. On a number of occasions, the Respondent sought to have Hearings postponed. On 10th February 2020, he sought to have the Hearing of 17th February postponed because his daughter was in Pakistan and he required to have her as a witness. This was refused on the basis that the evidence could be part heard. On 13th February 2020, the Respondent requested an adjournment on the basis that he was ill. A letter from a GP dated 14th February 2020 was subsequently produced which stated that the Respondent had suffered from certain symptoms for the previous two to three months and asking that he be excused from attending the Hearing on 17th February 2020. This letter was not given on soul and conscience and was refused. The Respondent's solicitor did not address the tribunal on the matter at the Hearing.

The Respondent's solicitor withdrew from acting on 3rd August 2020 which was the day prior to the Hearing on 4th August 2020. She advised the Tribunal that

she had provided that Respondent with the details necessary to phone into the conference call. The Respondent did not attend and the Hearing was adjourned to 1st September 2020 where the Respondent indicated that he had been waiting for the tribunal to telephone him on the date of the previous Hearing. He asked for a postponement so that he could instruct a solicitor. This was refused on the basis that he had had time to do this and it was accepted by the tribunal that another solicitor had been instructed and had withdrawn. The tribunal, in refusing the application for an adjournment, balanced the needs of the parties, the amount of arrears and the fact that the matter was unlikely to be resolved that day and the Respondent would have an opportunity to obtain representation prior to the next date of the Hearing. When questioned about why he had not dealt with the Direction dated 4th August 2020, the Respondent said that he did not know what to do or where to send documents. This was explained to him in detail. At the Hearing on 22nd October 2020, the Respondent at first said that he did not know what to do in respect of the Direction and he then changed his mind and said that he had sent documents to the tribunal office. No documents were received. Prior to the Hearing on 22nd October 2020, the Respondent asked that the Hearing be postponed because he would be in Pakistan for his sister's anniversary. He was asked to produce documentary evidence of when the air ticket had been booked given that, on 1st September 2020, suitable and unsuitable dates had been canvassed with the parties and he had not indicated that 21st and 22nd October would be unsuitable. No documentation was produced and when, on 22nd October 2020, the Respondent was asked if he was in Pakistan or Glasgow, he replied that he had been in Pakistan because his brother had died but that he returned early. This seemed to be inconsistent with the reasons for his earlier request for a postponement. At the Hearing on 22nd October, the Respondent said that he had a sore throat and then left the Hearing after making bellowing noises after he said that he was unwell. This followed upon a point where he seemed to be speaking fluently with no apparent sign of difficulties in speaking. At the Hearing on 26th October, the Respondent said that he was still unwell and that there was no one to help him. He then left the tribunal Hearing without notice and the tribunal clerk was unable to make contact with him.

The tribunal considered that it was entitled to hold that the Respondent was seeking to delay determination of the applications. A major plank of the Respondent's case was that he had required to have work carried out to the Property and sought to persuade the tribunal that this was the case but it was considered significant that the Respondent had not complied with the Direction

which would assist the tribunal in determining this aspect of his case. This was despite being given time to do so and it being explained to him on 1st September what was required.

The tribunal required to deal with matters justly and, despite the Respondent's absence, it did know what his position was- that he had not paid rent because of the condition of the Property and had required to carry out work to it. It also had the benefit of his former solicitor's representations. This was a case where the last payment in respect of rent was in July 2019 and, even though a payment was made then, the rent was substantially in arrears at that point. The tribunal considered that the Applicant was entitled to determination of the applications.

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.

Martin J. McAllister
Legal Member
11th November 2020