



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

**Chamber Ref: FTS/HPC/CV/18/3390**

**Re: Property at 2A The Ward, Strathaven, South Lanarkshire, ML10 6AS (“the  
Property”)**

**Parties:**

**Scottish Midland Co-Operative Society Ltd, Hillwood House, 2 Harvest Drive,  
Newbridge, EH28 8QJ (“the Applicant”)**

**Ms Angela Kerr, 65 North Hamilton Street, Kilmarnock, Ayrshire, KA1 2QL  
 (“the Respondent”)**

**Tribunal Member:**

**G McWilliams- Legal Member**

**Decision in absence of the Respondent**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that**

**Background**

1. This is an Application for a payment order dated 12<sup>th</sup> December 2018 brought in terms of Rule 70 (Application for civil proceedings in relation to an assured tenancy under the 1988 Act) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the 2017 Regulations”).
2. The Applicant sought payment of arrears in rental payments of £2, 641.07, violent profits of £1643.84 and clearing and cleaning costs of £576.00 in relation to the Property from the Respondent, and provided with their application copies of the short assured tenancy agreement, Statement of Arrears and Maintainit Scotland Ltd Invoice dated 30<sup>th</sup> November 2018.

3. The Short Assured Tenancy Agreement had been correctly and validly prepared in terms of the provisions of the Housing (Scotland) Act 1988, and the procedures set out in that Act had been correctly followed and applied.
4. The Respondent had been validly served by Sheriff Officers with the Notification, Application papers and Guidance Notes from the Tribunal on 17<sup>th</sup> January 2019, and the Tribunal was provided with the Execution of Service.

### **Case Management Discussion**

5. A Case Management Discussion was held on 7<sup>th</sup> February 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant was represented by Mr F Cameron of Gilson Gray LLP, Glasgow. The Respondent did not appear and was not represented. The Applicant's representative stated that the Respondent was in arrears of rent in the above sum and that the Applicant was entitled to violent profits, in the above sum, for the period from the date of termination of the parties tenancy agreement on 14<sup>th</sup> June 2018 until her eviction from the property on 16<sup>th</sup> October 2018. The representative further submitted that the Applicant was entitled to recover clearing and cleaning costs in terms of the above invoice. He asked the Tribunal to make the order for payment sought in the Application.

### **Statement of Reasons**

6. Section 16 of the Housing (Scotland) Act 2014 provides as follows:

"16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3) Part 1 of schedule 1 makes minor and consequential amendments."

7. Accordingly, the Tribunal now has jurisdiction in relation to claims by landlords (such as the Applicants) for payment of unpaid rental against a tenant (such as the Respondent) under a short assured tenancy such as this.
8. The Tribunal considered the terms of the Short Assured Tenancy agreement and the copy Rent Arrears Statement and Invoice provided, and was satisfied

that these papers established that there were monies due to the Applicant, at the date of the Application, namely 12<sup>th</sup> December 2018, in the sum sought of £4360.91. Accordingly, the Tribunal made an order for payment of the sum sought of £4360.91.

9. The Tribunal did not include interest when making the order for payment given the terms of Regulation 2 (16) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Amendment Regulations 2018 which inserts a new Rule 41A in the 2017 Regulations. Rule 41A does not come into force until 20<sup>th</sup> February 2019.
10. The Tribunal did not make any award of expenses. The Respondent had not engaged in the current proceedings and therefore the criteria in Rule 40 in the 2017 Regulations were not satisfied.

### **Decision**

11. Accordingly, the Tribunal makes an order for payment by the Respondent to the Applicant of the sum sought of £4360.91.

### **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.**

# G McWilliams

G McWilliams

7<sup>th</sup> February 2019

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Legal Member

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Date