

**Housing and Property Chamber**  
First-tier Tribunal for Scotland



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) and Rule 70 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules)**

**Chamber Ref: FTS/HPC/CV/19/2205**

**Re: Property at 57 McConnell Road, Lochwinnoch, Renfrewshire, PA12 4EB (“the Property”)**

**Parties:**

**Mr Louis Jeffrey, 12 Fulton Gardens, Houston, Renfrewshire, PA6 7NU (“the Applicant”)**

**Mr James Gillespie, current whereabouts unknown, previously residing at 57 McConnell Road, Lochwinnoch, Renfrewshire, PA12 4EB (“the Respondent”)**

**Tribunal Members:**

**Susanne L. M. Tanner Q.C. (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent should pay the Applicant the sum of FOUR THOUSAND SIX HUNDRED AND FORTY SEVEN POUNDS AND NINETY FOUR PENCE (£4647.94) STERLING; and made an Order for Payment in respect of the said sum; together with interest running from the date of the decision of the tribunal at eight per cent per annum until paid, in terms of Rule 41A of the Tribunal’s Rules at the rate stated in the relevant tenancy agreement.**

## STATEMENT OF REASONS

### 1. Procedural Background

- 1.1. The Applicant made an Application to the tribunal on 16 July 2019 in terms of Section 16 of the 2014 Act and Rule 70 of the 2017 Rules, seeking an order for payment against the Respondent in the sum of £4,475.23 in respect of rent arrears; together with interest at the rate provided for in the tenancy agreement from the date of the arrears in addition to the sum claimed; less the Respondent's deposit of £750.00, which was retained by the Applicant.
- 1.2. The documentation with the Application comprised:
  - 1.2.1. Short Assured Tenancy Agreement dated 28 May 2016;
  - 1.2.2. AT5 form dated 28 May 2016;
  - 1.2.3. Mail addressed to Respondent care/of Barry Gillespie, 36 Meadowside, Beith, North Ayrshire, KA15 1BY; with Royal Mail delivery information showing mail returned to sender 14 May 2018;
  - 1.2.4. Letter from Sheriff Officers to tribunal dated 24 July 2018, regarding failed service on Respondent at 36 Meadowside, Beith, North Ayrshire, KA15 1BY;
  - 1.2.5. Rent Statement 28 May 2016 to 3 May 2018;
  - 1.2.6. Letter dated 1 May 2018 addressed to Respondent at 1 Laburnum Avenue, Beith, KA15 1BQ;
  - 1.2.7. Letter dated 25 June 2018, addressed to Respondent c/o 36 Meadowside, Beith, KA15 1BY;
  - 1.2.8. Copy email correspondence between Applicant and Respondent;
  - 1.2.9. Property account bank statement printed 26 June 2018;
  - 1.2.10. Witness statement dictated by Applicant 19 August 2018;
  - 1.2.11. Request for Service by advertisement received 16 July 2019.
- 1.3. The Application and documentation submitted with it; and the request for service by advertisement, were considered by the legal member of the tribunal with delegated powers of the Chamber President.
- 1.4. On 30 July 2019, the Application, which comprised documents received on 16 July 2019, was accepted for determination by the tribunal.
- 1.5. A Case Management Discussion ("CMD") was fixed for 16 September 2019 at 1400 hours at Glasgow Tribunals Centre, Room 109, 20 York Street, Glasgow, G2 8GT.
- 1.6. By letter of 6 August 2019, parties were notified of the date, time and place of the CMD and were told that they were required to attend. Parties were

advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application, which may involve making or refusing a payment order. Parties were advised that if they do not attend the CMD that would not stop a decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair. The Respondent was invited to submit written representations in response to the Application by 24 August 2019.

- 1.7. Between 6 August 2019 and 16 September 2019, service by advertisement on the Respondent was carried out by publishing on the tribunal's website notice of the Case Management Discussion notification letter dated 6 August 2019.
- 1.8. The Respondent did not submit any written representations or make any contact with the tribunal up to and including the date of the CMD on 16 September 2019.
- 1.9. The tribunal issued Directions to the Applicant dated 3 September 2019.
- 1.10. The Applicant complied with the tribunal's Directions by submitting further information on 11 September 2019, including
  - 1.10.1. a second witness statement dictated by the Applicant on 10 September 2019;
  - 1.10.2. an updated rent statement removing the claim for interest prior to the date of the tribunal's decision;
  - 1.10.3. email correspondence between the parties dated 22 January 2018 in relation to the Respondent's notice to end the tenancy as at 27 May 2018;
  - 1.10.4. confirmation of the sale of the Property with a date of entry of 4 May 2018;
  - 1.10.5. evidence of deposit payment by the Respondent of £750
  - 1.10.6. 2 emails said to contain a video inventory and video, which the tribunal's administration advised the Applicant could not be accepted in that format but that he may wish to bring a device to play them at the CMD or hearing.
- 1.11. By email of 11 September 2019, the Applicant amended his Application to seek the sum of £4647.94 plus interest at the rate in the tenancy agreement from the date of the tribunal's decision.

**2. CMD: 16 September 2019 at 1400h, Glasgow Tribunals Centre, Room 109, 20 York Street, Glasgow, G2 8GT**

2.1. The Applicant attended.

2.2. The Respondent did not attend the hearing and made no contact with the tribunal's administration or venue. The tribunal waited until 1415h to start the CMD. The tribunal was satisfied in terms of Rule 29 of the 2017 Rules that the requirements of Rule 24(1) of the 2017 Rules regarding the giving of notice of a hearing had been duly complied with and proceeded with the Application upon the representations of the Applicant and all the material before it.

2.3. The Applicant made oral submissions to the tribunal to supplement the written submissions and documents already before the tribunal.

2.4. The Applicant stated that the last time he saw the Respondent was on 12 March 2018 at the checking out meeting at the Property. The Applicant spoke to the Respondent after that date on one occasion, on which the Respondent reiterated his intention to draw down on his pension to pay the rent arrears and /or to use the sale proceeds from the sale of his property near Langbank. At the time the Respondent had taken the tenancy he had shown bank accounts to the Applicant which had a sum of money in excess of the current rent arrears, which he had advised the Applicant was from the sale of his Property. The Applicant stated that he was aware that the Respondent had already taken a drawdown from his pension to buy a refrigerated vehicle. There has been no payment by the Respondent to the Applicant in respect of any of the rent arrears which were outstanding at the end of the tenancy. In subsequent phonecalls the Respondent has hung up on the Applicant or has not taken the calls. He also provided a false address to the Applicant at the checkout meeting.

2.5. The Applicant addressed the tribunal on the documents which had been lodged. There was a Short Assured Tenancy between the parties which began on 28 May 2016 and was signed by both parties on that date. The Respondent was the sole tenant. The Respondent had asked for a year initially, to 27 May 2017. Thereafter the tenancy renewed itself on an annual basis, for a year on the anniversary. With two months' notice he could have terminated on or prior to 27 March 2017 to end the tenancy on 27 May 2017. Similarly, with 2 months' notice on or prior to 27 March 2018, he could have terminated for 27 May 2018. The SAT was allowed to continue for another year on the agreed terms. The Respondent never contested the renewal from 28 May 2017 for a further year. When the Respondent started to go into arrears there was a discussion about how he was going to manage his rent

payments. The Respondent advised the Applicant that he intended to move out at the end of the lease. He told the Applicant that was going to go and visit his daughter in Ireland. He said that he would move out in the middle of the lease or before the end. The Applicant made the point to the Respondent that he would endeavour to find a new tenant or sell the property at the earliest opportunity to relieve the Respondent of any responsibility and the Respondent was happy that. The Respondent moving out in March 2018 assisted that process as it allowed the Applicant to market but the lease was still running until 27 May 2018. The Respondent gave verbal notice to the Applicant which the Applicant formalised and accepted as two months' notice to end the tenancy on 27 May 2018 (or earlier if a new tenant could be found or the Property could be sold.) Applicant doc. 1 dated 22 January 2018 shows that the Applicant accepted the notice given by the Respondent and the Respondent replied on 22 January 2018 to say "*that's all fine by me*". The Respondent moved out on 12 March 2018. The Applicant arranged for his brother in law to remove an item belonging to the Respondent and deliver it to the Respondent's sister's address. The Respondent provided a forwarding address which turned out to be false.

2.6. The Applicant stated that the property was sold on 4 May 2018.

2.7. Rent arrears have therefore been calculated to 3 May 2018, as shown in the revised rent statement lodged in response to the Direction. There are seven months' rent payments at £750, which equals £5250; plus a pro rata amount from 28 April 2018 to 3 May 2018, calculated on the basis of daily rent x 6 days which equals £147.94. The total rent arrears are £5397.94. From that, the Applicant has deducted £750.00 for the Respondent's, deposit, leaving a balance of **£4647.94**.

2.8. As stated above, by email of 11 September 2019, the Applicant amended his Application to seek the sum of £4647.94 plus interest at the rate in the tenancy agreement from the date of the tribunal's decision. The tribunal allowed the Applicant to amend the Application at the CMD to seek this lower sum, which removed the claim for interest from the date of the arrears but sought interest from the date of the tribunal's decision.

2.9. The tenancy agreement provides for interest at eight per cent per annum from the date of payment until paid. Rule 41A of the tribunal's Rules allows interest to be at either the date stated in the relevant tenancy agreement or at a rate ordered by the tribunal, and running from the date of the decision of the tribunal.

3. The tribunal makes the following findings-in-fact:

- 3.1. There was a Short Assured Tenancy between the Applicant and the Respondent dated 28 May 2016.
- 3.2. The initial tenancy term was for the period 28 May 2016 to 27 May 2017. After that time the lease tacitly relocated on an annual basis until it ended by the tenant giving two months' notice to end the tenancy on 27 May 2018.
- 3.3. The parties agreed that should the property be sold at a date earlier than 27 May 2018 the tenancy could be ended one day before that earlier date.
- 3.4. The Property was sold on 4 May 2018.
- 3.5. The tenancy ended on 3 May 2018.
- 3.6. The rent payable in terms of the lease was £750.00 per calendar month payable monthly in advance on the 28<sup>th</sup> of each month.
- 3.7. Rent is payable by the Respondent to the Applicant for the period from 28 May 2016 to 3 May 2018, at the rate of £750.00 per calendar month.
- 3.8. The rent arrears for the period 28 May 2016 to 3 May 2018 were £5397.94.
- 3.9. The Applicant retained the Respondent's deposit of £750.00 to credit towards the rent arrears.
- 3.10. The balance of rent arrears after deduction of the deposit of £750.00 is £4647.94.
- 3.11. The contractual rate of interest stated in the tenancy agreement is eight per cent per annum from the date of payment until paid.

4. **Decision**

- 4.1. The tribunal determined on the basis of the Application (including supporting documents) and the oral representations made on behalf of the Applicant; and in the absence of written or oral submissions from the Respondent; that the Applicant had proved that the Respondents owes the Applicant the amended sum of £4647.94 sought on behalf of the Applicant and made an order for payment by the Respondent to the Applicant for the said sum.

4.2. The contractual rate of interest in the tenancy agreement is eight per cent per annum and the tribunal included interest at this rate from the date of the decision until paid.

### **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.**

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**Susanne L. M. Tanner Q.C.  
Legal Member/Chair**

**16 September 2019**