



**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/18/3088**

**Re: Property at 7 Glen Orchy Road, Cleland, Motherwell, ML1 5SA (“the  
Property”)**

**Parties:**

**Mr Graham Hendry, C/O 45 Ross Crescent, Greenacres, Motherwell, ML1 3AU  
 (“the Applicant”)**

**Mr Thomas Wale, 1 Forrest Place, Harthill, ML7 5RP (“the Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that the Applicant was entitled to an order for payment  
by the Respondent to the Applicant in the sum of £3950.00.**

**Background**

1. By application dated 13 November 2018 the Applicant applied to the Tribunal for an order for payment in respect of rent arrears and other costs said to be due by the Respondent to the Applicant arising out of the lease of the property. The Applicant provided the Tribunal with copies of bank statements, text messages, photographs and the tenancy agreement in support of his application.
2. Following further correspondence between the Applicant and the Tribunal, a legal member of the Tribunal with delegated powers by Notice of Acceptance dated 17 January 2019 accepted the application and a case management discussion was assigned.

3. After some difficulty in tracing the Respondent intimation of a Case Management Discussion was served on the Respondent by Sheriff Officers on 24 April 2019 at his current address namely, 1 Forrest Place, Harthill ML7 5RP. Intimation of the Case Management Discussion was also sent to the Applicant.

#### Case Management Discussion

4. A Case Management Discussion was held at Glasgow Tribunals Centre, 20 York Street, Glasgow on 21 May 2019. The Applicant attended by conference call. There was no appearance by the Respondent. The Tribunal amended the Respondent's address to 1 Forrest Place, Harthill ML7 5RP. The Tribunal being satisfied that proper intimation of the case management discussion having been given to the Respondent determined to proceed in his absence in accordance with Rule 29 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Regulations").
5. The Applicant confirmed he was no longer insisting on that part of his claim amounting to £920.00 in respect of damage to the property and the cost of cleaning and securing the property as he had not provided the Tribunal with any receipts or invoices in respect of the claim.
6. The Applicant confirmed that the Respondent had paid the rent of £1100.00 per month from 15 February up to 15 July. Thereafter the Respondent had paid £450.00 in July and no rent thereafter. By 15 October the rent due amounted to £3950.00. The Applicant referred the Tribunal to the schedule and bank statements lodged with his application. The Applicant confirmed the Respondent had not paid any deposit.
7. The Applicant confirmed to the Tribunal that in addition to the rent arrears of £3950.00 he was looking for a further two months' rent in the sum of £2200.00 as the Respondent had abandoned the property without giving the notice required in terms of the tenancy agreement. The applicant had been obliged to raise eviction proceedings and had appeared before a Tribunal in this regard in December 2018.
8. The Tribunal queried with the Applicant the fact that the parties had entered into what had purported to be a Short Assured Tenancy in February 2018 when such tenancies were no longer possible. The Applicant confirmed that he was now aware that this was the case. The Tribunal pointed out that in terms of the Private Housing (Tenancies) (Scotland) Act 2016 the tenancy entered into by the parties would have been a private residential tenancy and the Respondent would therefore only have needed to give the Applicant 28 days' notice. The Applicant said he had not been aware of this but accepted that this could be the case.
9. The Applicant advised the Tribunal that he became aware on about the 17<sup>th</sup> or 18<sup>th</sup> of October 2018 that the Respondent had vacated the property although he had not removed all his belongings. The Respondent had left the back

door open and the property was not secure. In order to secure the property the applicant had changed the locks. He had then discovered that the Respondent had obtained the tenancy of property elsewhere. The applicant said he had contacted the Respondent to make arrangements for him to remove his remaining belongings. He had not immediately taken entry to the property to clean it up as he was working abroad. He did not take entry and clear the property out until December 2018.

10. In response to a question from the Tribunal the Applicant accepted that by changing the locks to the property and displaying a Notice of Abandonment at the property the Respondent was effectively unable to return to live in the property. The Applicant said this point had been raised by the Tribunal dealing with the eviction of the Respondent in December 2018 but that he maintained it had been necessary to make the property secure. The Applicant confirmed that his parents had held a spare set of keys for the property.

#### Findings in Fact

11. The parties entered into a Private Residential Tenancy that commenced on 15 February 2018 at a monthly rent of £1100.00.
12. At 15 October 2018 the Respondent had rent arrears of £3950.00.
13. The Respondent vacated the property around 15 October 2018.
14. The Applicant changed the locks at the property on or about 18 October 2018.
15. The Respondent would not have been able to return to live in the property after the locks were changed.
16. The Applicant did not take steps to clean out the property and re-market it until he returned from abroad in December 2018.

#### Reasons for Decision

17. The Tribunal was satisfied that the Applicant could vouch for the Respondent being in arrears of rent of £3950.00 for the period up to 15 October 2018.
18. The Respondent in terms of the Private Housing (Tenancies)(Scotland) Act 2016 ought to have given the Applicant 28 days' notice of his removal from the property but did not do so. There was no obligation on the part of the Respondent to give two months' notice. Had the Applicant simply used the spare set of keys held by his parents and secured the property after finding it unlocked on 17 or 18 October the Tribunal would have considered it appropriate to have awarded the Applicant a further month's rent but by changing the locks on finding the property as he saw it abandoned the Applicant effectively prevented the Respondent from returning to the property other than to make arrangements to collect his belongings. The Tribunal therefore did not think it appropriate to make any further award to the

Applicant in those circumstances. The Applicant indicated that he was happy to accept an order for payment restricted to the arrears up to 15 October 2018.

#### Decision

19. The Tribunal having considered the application and the documents lodged by the Applicant along with the Applicant's submissions at the case management discussion finds the Applicant entitled to an order for payment by the Respondent to the Applicant in the sum of £3950.00.

#### 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 Harding

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Legal Member/Chair

21 May 2019  
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Date