



**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/19/0438**

**Re: Property at 9 Meagher Court, Cumnock, KA18 1NA (“the Property”)**

**Parties:**

**Mr Sacha Sepehr, 35 Arthur Court, Charlotte Despard Avenue, London, SW11  
5JA (“the Applicant”)**

**Mr James McClusky, formerly residing at 9 Meagher Court, Cumnock, KA18  
1NA, and whose current address is unknown (“the Respondent”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member)**

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

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

**Background**

This is an application for a payment order dated 8<sup>th</sup> February 2019 and 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 Applicant sought in his application payment of arrears in rental payments of £3,727.04 in relation to the Property from the Respondent, who is joint tenant of the Property with Miss Bernadette Cairns, and with whom he is jointly and severally liable in terms of Clause 3 of the tenancy agreement. The Applicant provided with his application copies of the short assured tenancy agreement, rent arrears statement and various correspondence.

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.

The Respondent had been validly served by advertisement in terms of Rule 6A (Service by advertisement) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Case Management Discussion notification letter dated 13<sup>th</sup> April 2019 containing details of the Case Management Discussion today was advertised on the Tribunal website between 15<sup>th</sup> April and 17<sup>th</sup> May 2019, and I was provided with a certificate from the Scottish Courts and Tribunals Service confirming these details.

### **Case Management Discussion**

A Case Management Discussion was held on 20<sup>th</sup> May 2019 at Russell House, King Street, Ayr. The Applicant did not appear, but was represented by Mrs McQueen, letting agent. The Respondent did not appear, nor was he represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

I was invited by Mrs McQueen with reference to the application and papers to grant an order for payment of the sum sought in the application of £3,727.04, which is the sum that the rent arrears statement indicated is currently outstanding up to 21<sup>st</sup> March 2019, and which sum was intimated to the Tribunal on 21<sup>st</sup> March 2019 as an amendment to the sum originally sought in the application.

### **Statement of Reasons**

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.”

Accordingly, the Tribunal now has jurisdiction in relation to claims by a landlord (such as the Applicant) for payment of unpaid rental against a tenant (such as the Respondent) under a short assured tenancy such as this.

The Tribunal considered the terms of the short assured tenancy agreement and the copy rent arrears statement provided, and was satisfied that this disclosed an outstanding balance of rent arrears in the sum sought of £3,727.04.

Accordingly, the Tribunal shall make an order for payment of that sum.

### **Decision**

In these circumstances, the Tribunal will make an order for payment by the Respondent jointly and severally with Miss Bernadette Cairns to the Applicant of the sum of £3,727.04.

### **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.**

**N Kinnear**

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**Legal Member/Chair**

20/05/19

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**Date**