

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 Section 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/CV/19/2065

Re: Property at 16 Pilton Loan, Edinburgh, EH5 2EZ (“the Property”)

Parties:

**Mr Colin Gilbert, Mrs Jane Gilbert, Old Dairy House, Dundas Home Farm,
South Queensferry, EH30 9SS; Old Dairy House, Dundas Home Farm, South
Queens Ferry, EH30 9SS (“the Applicant”)**

Mr William McIvor, 16 Pilton Loan, Edinburgh, EH5 2EZ (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for payment of the sum of £2,400 should
be granted.**

Background:

The Applicants are seeking an order for payment of rent arrears for the property. The Application under Rule 70 of the Rules of Procedure was made on 1 July 2019. A copy tenancy agreement and a rent statement advising of the outstanding sums as well as copy bank statements were submitted with the application. These are referred to for their terms and held to be incorporated herein. The background for the application and submissions regarding the sums due are included in Part 5 of the application and are referred to for their terms and held to be incorporated herein.

The application had initially been made only by Mrs Jane Gilbert and had stated Mr McIvor and a Rachel Gilbert as the joint Respondents. Following correspondence with the Tribunal administration the application was extended to show Mr Colin Gilbert as the joint Applicant and by email dated 27 August 2019 Rachel Gilbert was removed as the joint Respondent and the case proceeds against Mr McIvor only.

The Tribunal fixed a Case Management Discussion (CMD) for 4 November 2019. The Applicants both attended. The Respondent did not attend.

The documentation regarding the case and the intimation of the CMD details was served on the Respondent by Sheriff Officers on 3 October 2019.

No representations were received from the Respondent. The Respondent had not contacted the Tribunal prior to the CMD.

The Tribunal was satisfied that they had been appropriately notified of the application and the CMD.

The Case Management Discussion:

The Applicants confirmed that the rent had been paid at the rate of £800 per month since the amount of rent had been increased by mutual agreement from £650 per month as stated on the tenancy agreement to £800 per month. Payments for rent for the property of £800 per month had been received until 2 April 2019 but had ceased in May and since then no further payments had been received. The Respondent still resides in the property.

The Respondent had not lodged a defence to the application and had made no representations.

Findings in Fact:

1. **The property is jointly owned by the Applicants.**
2. **The Applicant and the Respondent entered into a Tenancy Agreement on 23 January 2015 with an initial end date on 23 January 2016 and continuing thereafter month to month (Clause 3).**
3. **In terms of the Agreement rent of £650 is due monthly in advance (Clause 4).**
4. **The amount of rent had been increased to £800 per month as of January 2019 in mutual agreement between the Applicants and the Respondent.**
5. **Rent at the rate of £800 per month for the property was paid to the Applicants until 2 April 2019.**
6. **No rent has been paid for the months of May, June and July 2019.**
7. **The amount outstanding for the months of May, June and July 2019 is £2,400.**
8. **No offer of payment has been made by the Respondent.**
9. **The Respondent continues to reside in the property together with a Rachel Gilbert, who had been making rent payments for the property until April 2019 as shown in the bank statements.**

Reasons for the Decision:

The Tribunal considered that the facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

However, in terms of Rule 18 of the Rules of Procedure:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

The documents lodged are referred to for their terms and held to be incorporated herein.

The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case.

The Tribunal makes the decision on the basis of the documents lodged by the Applicants and the information given at the CMD.

There were no representations by the Respondent and thus there is no dispute about the facts of the case. The Tribunal thus accepted that the rent had been increased to £800 per month and that no payments had been made for the months of May to July 2019. The Tribunal accepted that the original application had been amended to include Mr Colin Gilbert as per the email of 26 July 2019 and to remove Ms Rachel Gilbert as a joint Respondent in terms of the email sent to the Tribunal on 27 August 2019. In those circumstances an order could only be granted against the person who still remained as the Respondent in terms of the Application. .

The rent arrears due for the period of rent of May, June and July 2019 are £2,400.

There was no valid defence to the action. It is not in dispute that the sum is due by the Respondent to the Applicant.

The Applicant is entitled to payment of the sum of £2,400 from the Respondent.

Decision:

The Tribunal grants an order for payment of the sum of £2,400.

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.

Petra Hennig-McFatrige

Legal Member/Chair

4.11.19

Date