



**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/18/1997**

**Re: Property at 372 Colinton Mains Road, Edinburgh, EH13 9BS (“the  
Property”)**

**Parties:**

**Mr Ramesh Golkonda, 19 Craigmount Brae, Midlothian, EH12 8XD (“the  
Applicant”)**

**Mr Pradip Sutare, 372 Colinton Mains Road, Edinburgh, EH13 9BS (“the  
Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member) and Ann Moore (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that the application should be granted and made an  
Order for Payment by the Respondent to the Applicant of the sum of £5,760.**

**Background**

By application dated 1 August 2018, the Applicant sought an Order for Payment of the sum of £4,320 in respect of unpaid rent for the Property. The application was accompanied by a Rent Statement to 14 July 2018, showing arrears at that date corresponding to the sum sought.

On 15 October 2018, the Tribunal advised the Parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written representations by 1 November. The Respondent made written representations dated 19 October 2018.

In his written representations, the Respondent sought a postponement of the Case Management Discussion to enable him to obtain legal representation. He also made a number of allegations against the Applicant and stated that he needed time to lodge a counter-claim against the Applicant.

The Tribunal granted the request for a postponement.

The Case Management Discussion was held on 21 November 2018. The Respondent lodged further written representations and told the Tribunal that he had paid his rent every month, in cash, directly to the Applicant and that he was making a counter-claim in respect of money he had expended on the Property.

The Applicant's agent asked the Tribunal to allow the application to be amended to alter the sum sought to £5,760. This was not contested by the Respondent, as his position was that no sums were due. The Tribunal, accordingly, accepted the amendment.

It was clear to the Tribunal that there was a clear conflict of evidence in relation to payment or non-payment of rent and the Tribunal continued the matter to a full hearing, to be held on 14 January 2019. The Respondent was directed to provide in advance of the hearing details and vouching of any sums he considered were due to him by way of a counter-claim.

On 28 December 2018, the Respondent wrote to the Tribunal, stating that, at the Case Management Discussion on 21 November, both parties had agreed that the date for the hearing should be after 23 January 2019, as he was not available before then due to personal commitments for a religious festival and that this had been confirmed by the Tribunal Member. The Tribunal Member could find no reference in his notes to such a request or agreement, but, although the Applicant's agent objected to a postponement, the Tribunal accepted the request of 28 December 2018 to postpone the hearing, to allow the Respondent to attend the religious festival.

In his letter of 28 December 2018, the Respondent advised that he was the applicant in an application against the Applicant in the present case and stated that he wished all the applications to be heard together. The Tribunal was not satisfied from the application to which the Respondent referred that it had any bearing on the question of unpaid rent which was the subject of the present application, so did not consent to the applications being heard together. The Respondent's application contained a number of allegations against the present Applicant, relating to repairs, landlord registration, HMO licensing, the holding of a deposit and a failure to give receipts for rent paid.

The Parties were advised that the hearing had been rescheduled to 31 January 2019.

On 21 January 2019 the Respondent wrote to the Tribunal to request that the hearing be postponed again, to allow for his own application(s) to be dealt with at the same time. The Tribunal refused that request for the same reasons as it had refused the request of 28 December 2018.

By letter dated 28 January 2019, the Respondent again requested a postponement, but this also was rejected as the grounds for the request were the same as those contained in the letter of 28 December 2018 and 21 January 2019.

At 16.42 on 30 January 2019, the Respondent provided the Tribunal with a Statement of Fitness for Work for social security or Statutory Sick Pay, dated 30 January and covering the period from 29 January to 3 February 2019. The Tribunal did not consider that this justified the postponement of the hearing at such a late stage.

### **The Hearing**

The hearing was held at George House, 126 George Street, Edinburgh on the afternoon of 31 January 2019. The Applicant was present and was represented by

Neil Matheson of TC Young, solicitors, Glasgow and Edinburgh. The Respondent was not present or represented at the hearing.

Mr Matheson called the Applicant as a witness.

The Applicant told the Tribunal that he owned the Property jointly with his wife. They had purchased it in February 2017. It was to provide rental income to meet the costs of the education of their children. The Property comprised 5 bedrooms, living room, kitchen and bathroom.

The Respondent had contacted the Applicant at the end of June 2017, in response to an advert on Facebook, asking for a room for one week. The rent was agreed at £100 for the smaller bedroom on the first floor. This rent was paid by bank transfer. The Respondent then asked for a continuation of one month and it was agreed that he could move into one of the larger rooms, which was being vacated for that period. The rent was agreed at £360 and this was paid by bank transfer in two payments, one of £320 and one of £40, on 13 July 2017. The Respondent moved in to the room on 14 July 2017.

Since that date, the Respondent had not received any more bank transfers and he had never been paid any rent from the Respondent in cash. He told the Tribunal that he had, on occasion, taken a first month's rent from a tenant if it was someone moving to this country from India who did not have a bank account opened by the time they moved in. He had never called at the Property to collect rent.

Mr Matheson then referred the Applicant to copies of e-mail exchanges between the Parties, which had been lodged as Productions. They included a text sent by the Applicant on 20 July 2017, requiring the Respondent to vacate the Property within a week. The Applicant stated that this was sent as there had been a quarrel between the Respondent and another occupant. The Respondent had replied, saying that he had paid for a month so would not be vacating till 14 August.

The Applicant then referred to a number of text messages in which he reminded the Respondent of the amount of rent outstanding, rising to £2,940 as at 13 March 2018. The Respondent had not replied to any of these messages, apart from saying on 25 February 2018 that he did not owe any money to the Applicant and that the Applicant should just go to court if he thought he was owed any money. The Respondent had replied to elements of text messages relating to access for gas engineers, but had never addressed the rent issues which were included in the same messages.

The Applicant then told the Tribunal that he had made a HMO application, but this had been rejected by HMO Scotland on the ground that they had been unable to gain access to the Property on 27 November 2017 or 8 May 2018. Mr Matheson directed the Tribunal to an e-mail from Mr Brian Morgan of HMO Scotland of 27 November 2017, which referred to the inspection scheduled for that day having to be cancelled as the tenant (the Respondent) was refusing to allow access and the landlord (the Applicant) was having to go through the courts to have him evicted. The Respondent told the Tribunal that he had never been arrested by the police, but that he had been interviewed following a complaint by the Respondent about his behaviour towards him. Mr Matheson directed the Tribunal to a letter to the Applicant from his solicitors dated 28 June 2017, which confirmed that there would be no charges brought in relation to the matter.

The Applicant told the Tribunal that he had been a registered landlord for more than 10 years. He was currently unable to let the other rooms in the Property as the Respondent would not allow access. The lack of rent payments was causing a lot of pressure on the Applicant's family in managing their finances and his work had also

been affected due to the stress he was going through. In addition, he was still having to pay utilities and other bills for the Property.

Mr Matheson submitted to the Tribunal that the Order for Payment should be made. He had provided the Tribunal with an updated rental statement showing the arrears at £6,480, but as seeking an Order for the amount sought in the application, as amended at the Case Management Discussion, namely £5,760. He asked the Tribunal to find that the Applicant had been a reliable and credible witness. He had been candid in saying that he had, in certain circumstances, taken rental payments in cash. He had demonstrated through the text messages his attempts to engage with the Respondent on the question of rent, but the Respondent had failed so to engage. At no point had the Respondent said in these text messages that he had paid in cash or that the Applicant had called at the Property to collect rent and there was absolutely no evidence to support the Respondent's view of events. He accepted that there was no written lease, but cited authority to the effect that, in the absence of a written lease, its duration would be one year, from 14 July 2017 to 14 July 2018. All the other essential elements of a lease were there, the parties, subjects and rent.

### **Reasons for Decision**

The Tribunal considered carefully all the evidence before it, both written and oral. The Tribunal considered the Applicant to be a reliable and credible witness and held that there had been no rental payments made by bank transfer or in cash since July 2017. The Tribunal held that the essential elements of a lease were in place and that a lease commenced on 14 July 2017 and, in the absence of a written lease, ran for a period of one year.

The Respondent had spoken at the Case Management Discussion of a counter-claim, but had not provided the Tribunal with any vouching for any such claim.

### **Decision**

The Tribunal for Scotland determined that the application should be granted and made an Order for Payment by the Respondent to the Applicant of the sum of £5,760.

### **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.**

George Clark

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**Legal Member/Chair**

31 January 2019  

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**Date**