



**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/18/2965**

**Re: Property at 17 Newtongrange Place, Newtongrange, EH22 4DF (“the  
Property”)**

**Parties:**

**Mr Iain Gaul, Mrs Fiona Gaul, 5 Wester Coates Terrace, Edinburgh, EH12 5LR  
 (“the applicants”)**

**Mr Jamie Gilchrist, Ms Shelly Foreman, 17 Newtongrange Place,  
Newtongrange, EH22 4DF (“the respondents”)**

**Tribunal Members:**

**Lesley Johnston (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that the level of rent arrears due to be paid by the  
respondents to the applicants amounts to £1,635 and granted an Order for  
Payment in the sum of £1,635.**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that the order for possession should be refused.**

**Background**

1. By application dated 1 November 2018 submitted to the Tribunal under rule 70 of Schedule 1 to the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (‘the Regulations’) the applicants applied for an order for payment in the sum of £3,280 in respect of alleged rent arrears due to be paid by the respondents in respect of the tenancy at 17 Newtongrange Place, Newtongrange EH22 DF (‘the property’).

2. The applicants are the landlords at the property. The respondents are the tenants at the property.
3. The applicants raised proceedings on the basis of rent arrears having accrued on the account initially in the sum of £3,280. At the hearings on 30 January and 22 May 2019, following additional payments made by the respondents on 22 and 23 January, the applicants claimed that the arrears had reduced to the sum of £2,480 and sought payment on that basis.
4. The applicants also seek an order for possession of the property. That application was lodged on 1 November 2018 (ref: FTS/HPC/EV/18/2964). A separate decision has been issued in respect of that application.

### **Procedural history**

5. The application was considered at a CMD on 3 January 2019. At the CMD it became apparent that the rent arrears had accrued initially in 2010. The respondents advised that they had not received any demand for payment of these sums in recent years.
6. The Tribunal identified the following issues in dispute:
  - (i) Whether the rent the applicants claim is due has been demanded and if it is still lawfully due;
7. The Tribunal identified the following facts agreed:
  - (i) That the rent due for the property is £845 per calendar month;
  - (ii) That the AT6 was served
8. The Tribunal determined that the issues to be resolved were:
  - (i) When and whether there are rent arrears
  - (ii) Legal submissions on whether the rent is lawfully due if it is found that there are arrears;
9. A hearing was fixed for 30 January 2019. Prior to that hearing the Tribunal advised the parties that as part of the submissions on 'whether the rent is lawfully due' it wished to be addressed on how the Prescription and Limitation (Scotland) Act 1973 may affect matters. In particular, the parties were asked to address the Tribunal on section 6 and schedule 1, para (a)(v) of the Prescription and Limitation (Scotland) Act 1973.
10. At the hearing on 30 January 2019, the Tribunal therefore heard evidence and submissions on whether there were rent arrears and whether any rent arrears had been extinguished by the operation of prescription.

11. The Tribunal issued its decision in respect of prescription on 28 March 2019. The Tribunal was persuaded on the evidence that rent arrears were incurred between the period of 9 July 2010 (the first missed payment of rent) and 9 May 2011 (the last missed payment of rent). The Tribunal found that the arrears had not prescribed owing to the operation of 'Clayton's Principle' and had carried through the rent account.
12. The Tribunal asked the parties, in light of the vintage of the arrears, to confirm whether or not they had further evidence as to the level of rent arrears which are now lawfully due to be paid.
13. The Tribunal directed that the adjourned hearing in the case would determine:
  - (i) The level of rent arrears (if any) lawfully due to be paid by the respondents;
14. A copy of the decision dated 28 March 2019 is appended to this decision.
15. The adjourned hearing was fixed for 22 and 23 May 2019.
16. On 15 May 2019 the Tribunal administration advised the Tribunal that the applicants' solicitors had withdrawn from acting.
17. In advance of the hearing, the applicants lodged the following:
  - (i) Bank statement for Fiona Gaul and Ian Gaul dated 9 April 2019 showing payments in respect of January, February, March and April 2019;
  - (ii) An updated schedule of rent payments showing payments made by the respondents up to and including 9 April 2019 showing the arrears to be £2,480.
18. In advance of the hearing, the respondents lodged a letter from the Royal Bank of Scotland to Shelley Foreman dated 3 April.

#### **The Hearing on 22 May 2019**

19. The adjourned hearing took place on 22 May 2019 at George House, George Street, Edinburgh.
20. All the parties were personally present at the hearing on 22 May 2019.
21. The applicants advised that following the withdrawal of their solicitor they were representing themselves at the hearing.
22. The respondents submitted two documents at the hearing, although late. The documents comprised a Notice to Quit dated 6 March 2019 issued by the applicants' solicitors; and an AT2 Notice dated 6 March 2019 giving notice of an increase in rent from 9 May 2019 in the sum of £1,125. The applicants

had no objection to the document being received late and placed before the Tribunal. The Tribunal exercised its discretion to allow the document to be received although late in terms of Rule 22.

### **The evidence from the parties**

#### **The level of rent arrears due to be paid**

23. Mr Gaul gave evidence that the arrears were at the same level as the last hearing, namely £2,480. He advised that he had always accepted that these arrears had accrued in 2010 and 2011. There was never any dispute about the rental payments made by the respondents over the last several years. The missed payments were shown in the bank statements already provided to the Tribunal and to which he gave evidence on 30 January and detailed in the decision dated 28 March 2019.
24. Mr Gaul advised that the respondents started off paying on time in terms of the lease however over time the payments gradually got later and later until the arrears started to be incurred.
25. Mr Gilchrist gave evidence for the respondents on this matter. He advised that he had no way of proving or disproving the level of the rent arrears. He advised that the bank was unable to provide the respondents' copy bank statements for the relevant period. He referred to the letter from RBS dated 3 April in which it stated that the bank was "investigating [the respondents'] query regarding the statement for [the respondents'] closed account... I have ordered the statement for your closed account ending 3/94 from 01 January 2010 to 31 December 2012 and it will be delivered to your mailing address within 11 working days."
26. Mr Gilchrist told the Tribunal that when the bank statement arrived (which was not produced to the Tribunal) it simply contained an opening and closing balance. There was no real information on the transactions at that time.
27. Mr Gilchrist accepted that there was a liability to make payment in terms of the lease; that there were rent arrears; but advised that he was not in a position to provide evidence to challenge the level of arrears said to be due to be paid.

#### **Why the respondents had fallen into arrears in 2010/2011**

28. Mr Gaul advised that his understanding of why the rent arrears had accrued was that Mr Gilchrist had lost his job for a period of time and couldn't make the payments. The matter had been discussed at meetings and the applicants had been told that additional payments towards the arrears would be made. However, Mr Gaul accepted that there was no contact from the

applicants to the respondents about payment of the rent arrears between 2012 and the notice of these proceedings in respect of the eviction action. However, he did not expect the tenants to forget about the arrears. Equally, the applicants had received no contact or explanation from the respondents as to why the additional payments had been made in January in advance of the hearing on 30 January.

29. Mr Gaul explained that the respondents had been good tenants. In his view, the applicants had been understanding of the respondents' financial predicament which is why the rent arrears had not been chased and why the applicants had kept the rent at the same level from the beginning of the tenancy until the increase this month. In his view, the applicants had been more than reasonable.

30. Mr Gilchrist advised that he fell into some financial trouble in 2010 as he lost his job and the rent arrears started to accrue. The reason there had been no further payments towards the arrears was that the applicants didn't notify him post 2012.

### **Findings in Fact**

The Tribunal made the following findings in fact on the evidence:

1. The respondents held an assured tenancy in respect of the property;
2. The lease commenced on 9 July 2009;
3. The respondents continue to reside in the property with their 8-month old daughter;
4. The rent due in respect of the tenancy was £845 per calendar month from commencement of the tenancy until 9 May 2019 when the rent increased to £1,125 per calendar month;
5. The rent was payable monthly in advance;
6. The rent account fell into arrears on the account from 9 July 2010 as follows:
  - (i) Between 28 June 2010 and 1 November 2010 the respondents paid no rent to the applicants;
  - (ii) On 1 November 2010 the respondents paid £845 to the applicants
  - (iii) On 30 November 2010 the respondents paid £535 to the applicants
  - (iv) On 14 December 2010 the respondents paid £300 to the applicants
  - (v) On 24 January 2011 the respondents paid £845 to the applicants
  - (vi) On 24 February 2011 the respondents paid £845 to the applicants

- (vii) 1 April 2011 the respondents paid £845 to the applicants
- (viii) Between 1 April 2011 and 30 June 2011 the respondents paid no rent to the applicants
- (ix) On 30 June 2011 the respondents paid £845 to the applicants
- (x) On 29 July the respondents paid £845 to the applicants
- (xi) On 2 August 2011 the respondents paid £300 to the applicants
- (xii) On 30 August 2011 the respondents paid £1145 to the applicants
- (xiii) On 30 September 2011 the respondents paid £1145 to the applicants
- (xiv) On 31 October the respondents paid £1145 to the applicants
- (xv) On 30 November 2011 the respondents paid £1145 to the applicants
- (xvi) On 30 December 2012 the respondents paid £845 to the applicants
- (xvii) On 30 January 2012 the respondents paid £845 to the applicants
- (xviii) On 29 February 2012 the respondents paid £845 to the applicants
- (xix) On 30 March 2012 the respondents paid £845 to the applicants
- (xx) On 2 April 2012 the respondents paid £300 to the applicants
- (xxi) On 30 April 2012 the respondents paid £845 to the applicants
- (xxii) Between 30 April 2012 and 2 January 2019 (inclusive) the respondents paid £845 per month in respect of the rent
- (xxiii) An AT6 notice was served on 12 October 2018 in respect of these proceedings;
- (xxiv) The rent account was in arrears as at the date of service of the AT6 (12 October 2018) in the sum of £4,125
- (xxv) On 2 November 2018 at application for proceedings was lodged by the applicants.
- (xxvi) The rent account was in arrears as at the date of raising proceedings (2 November 2018) in the sum of £3,280;
- (xxvii) On 22 January 2019 the respondents paid £800 by way of an additional payment to the applicants

- (xxviii) On 23 January 2019 the respondents paid £845 by way of an additional payment to the applicants;
- (xxix) On 11 February 2019 the respondents paid £845 to the applicants
- (xxx) On 11 March 2019 the respondents paid £845 to the applicants
- (xxxi) On 9 April 2019 the respondents paid £845 to the applicants.
- (xxxii) The rent arrears on the account as at the date of the hearing on 22 May 2019 are £1,635;
- (xxxiii) The applicants did not issue any demands for payment between 11 October 2012 and the service of the AT6 on 12 October 2018;
- (xxxiv) there was a failed attempt by the applicants to evict the respondents from the property in 2018 as a short-assured tenancy eviction;
- (xxxv) as at the date the proceedings began some rent lawfully due to be paid by the respondents was unpaid;
- (xxxvi) as at the date the AT6 was served some rent was lawfully due to be paid by the respondents was unpaid;
- (xxxvii) The respondents have not found alternative accommodation
- (xxxviii) Mr Gilchrist is in full-time employment
- (xxxix) Ms Foreman is currently on maternity leave from a full-time position as a clinical support worker
- (xl) The applicants desire to sell the property in order to fund their daughter's university course

### **Reasons for Decision**

#### **The level of rent arrears lawfully due to be paid**

31. It was a matter of agreement that the respondents held an assured tenancy of the property and were liable to make payment of rent in the sum of £845 monthly in advance.
32. Having established at the hearing on 30 January 2019 that rent arrears existed on the account; and that they had not prescribed, the Tribunal asked the parties whether they had any further evidence in respect of the level of arrears lawfully due to be paid. The applicants produced updated bank statements showing the payments made by the respondents since the hearing on 30 January. The respondents requested bank statements from RBS but advised that the statements received simply detailed an opening and closing

balance. Those statements were not produced and therefore no further evidence was received from the respondents to challenge the applicants' evidence by reference to bank statements.

33. The Tribunal found the applicants' evidence, supported by bank statements, on the existence of the rent payments made and missed throughout the period of the rent account to be credible and reliable.
34. In summary, the respondents missed rental payments in July, August, September and October 2010 amounted to arrears of £3,380. There were subsequent payments by the respondents in the sum of £845 on 1 November 2010, £535 on 30 November 2010, £300 on 14 December 2010, £845 on 24 January 2011, 24 February 2011, and 1 April 2010. There were no further payments of rent until £845 on 30 June 2010 and 29 July 2010 by which point the arrears had increased to £5,080. There was a payment of £300 on 2 August 2011 reducing the arrears to £4,780. On 30 August 2011, 30 September 2011, 31 October 2011, 30 November 2011 the respondents paid £1,145 respectively, reducing the arrears to £4,425 as at 9 December 2012. Regular monthly payments of £845 were made on 30 December, 30 January, 29 February and 30 March 2012 with arrears reducing to £3,580 as at 30 March 2012. A payment of £300 was paid on 2 April 2012 reducing the arrears to £3,280.
35. Thereafter, on the 9<sup>th</sup> of each month (the day on which rent was due to be paid) the arrears would increase to £4,125 and reduce to £3,280 following each monthly payment of £845 thereafter. That position continued throughout the rent account to the raising of these proceedings.
36. The notice of proceedings was served on 12 October 2018 at which point the arrears were £4,125.
37. The application to the tribunal was lodged on 2 November 2018 at which point the arrears had reverted to £3,280.
38. The applicant sought to increase the sum sought in the application prior to the CMD to £4,125. However, on the basis that the respondents paid £845 as their regular monthly payment on 2 January 2019 the arrears reverted back to £3,280 and the amendment was not moved by the applicants.
39. The further additional payments made by the respondents on 22 and 23 January respectively in the total sum of £1,645 thereby reduced the arrears to £1,635.
40. On 9 February the arrears reverted to £2,480. The respondents paid the applicants £845 on 11 February 2019 reducing the arrears to £1,635.
41. On 9 March 2019 the arrears reverted to £2,480. The respondents paid the applicants £845 on 11 March 2019 reducing the arrears to £1,635.



42. On 9 April the arrears reverted to £2,480. The respondents paid £845 on the same date, thereby reducing the arrears to £1,635. No information was before the Tribunal as to payments subsequent to 9 April 2019. In any event, the rent increased to £1,125 on 9 May 2019. The applicants made no application to amend the application to seek any payment in respect of a missed payment of rent on 9 May 2019.
43. The applicants having raised proceedings seeking payment of arrears in the sum of £3,280 and the respondents having made additional payments (i.e. payments over and above the monthly payments of £845) the arrears due to be paid by the respondents in terms of the application amount to £1,635.
44. At the hearing on 22 May 2019, the respondents accepted that there were unpaid rent arrears on the account as at both the date of the notice of proceedings and the date on which proceedings were commenced. In addition, the respondents made additional payments to the applicants on 22 and 23 January and at the hearing on 30 January 2019 the respondents accepted that there were rent arrears but disputed the level to be paid as he had received no demand for payment since 2012 until proceedings were raised. Mr Gilchrist advised that if the arrears had been brought to his attention he would have made payment.
45. That the applicants did not demand payment of the arrears accrued on the account between 2012 until proceedings were raised does not mean that those rent arrears are not lawfully due for payment. There was no evidence before the Tribunal in relation to the respondents withholding payment for any reason. In the decision dated 28 March the Tribunal decided that the arrears continued to carry through the rent account due to the application of Clayton's Principle and had not prescribed.
46. That being the case, the rent arrears of £1,635 continued to be lawfully due for payment by the respondents.
47. Accordingly, the Tribunal orders the respondents to pay the applicants the sum of £1,635.

### **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.**



**Legal Member/Chair**

27/06/19

**Date**