



**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/18/3499

Re: Property at 91 Kirkwood Place, Coatbridge, ML5 5LG (“the Property”)

Parties:

Mr Tahir Jamshid, 1 Bishopburn Drive, Coatbridge, NL5 1EF (“the Applicant”)

**Mr Howard Mcdonald, Mrs Cynthia Mcdonald, 91 Kirkwood Place, Coatbridge,
ML5 5LG (“the Respondents”)**

Tribunal Members:

Neil Kinnear (Legal Member) and Helen Barclay (Ordinary Member)

Decision

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

History

[1] This is an application for a payment order dated 20th December 2018 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.

[2] The Applicant sought payment of arrears in rental payments of £8,230.00 in relation to the Property from the Respondents, and provided with his application copies of the short assured tenancy agreement and handwritten rent arrears statement.

[3] 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.

[4] A Case Management Discussion was set for 11th April 2019. That was postponed by the Tribunal at the request of the Respondents, who e-mailed the Tribunal on 2nd April 2019 requesting a postponement upon the basis that they had an appointment booked for that date to obtain legal advice in relation to this application.

[5] In response to a request from the Tribunal to produce evidence of the appointment, by further e-mail of 8th April 2019, the Respondents confirmed their appointment was with the Citizens Advice Bureau, but failed to provide any evidence of that.

[6] A Case Management Discussion was held on 22nd May 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant did not appear, but was represented by Mr Ritchie, solicitor. The Respondents appeared, and were not represented.

[7] The Tribunal explored the parties' respective positions with them. The Respondents explained that they signed the lease, but that on the day they moved into the Property it was obvious that it needed a lot of remedial work carried out to it in order to make it fit for habitation.

[8] They discussed this with the Applicant on the day they moved in, and he agreed with the Respondents that they would "fix up" the Property, and could deduct the costs of doing so from the rent payments they were due to make.

[9] The Respondents stated that they have done a lot of work to the Property, have advised the Applicant of what they had done and provided receipts to him for the work, and have deducted the cost of the work from their rental payments.

[10] As a result of this, they stated that they were currently due no outstanding rent to the Applicant. They advised that the Property still needs further work to be done. The bathroom and the kitchen oven, for example, still did not work.

[11] The Respondents also advised that they had been threatened on behalf of the Applicant in relation to this dispute about rental, and that they have just lodged an application with the Tribunal alleging that the Applicant has failed to lodge their deposit payment with an approved scheme.

[12] Finally, they advised that they were to still to see someone at the Citizen's Advice Bureau to discuss their case in more detail and receive legal advice upon it.

[13] Mr Ritchie asked that the Respondents provide receipts and vouchings for the various repairs and works which they stated they had carried out, and indicated that he understandably would need to take the Applicant's instructions on the various issues discussed.

[14] The Tribunal issued a Direction dated 22nd May 2019 to the parties.

The Respondents were required to provide:

1. A rent statement showing the dates made and amounts of all rent payments they have made to the Applicant since the start of the lease to date, and listing all the works which they have carried out to the Property and showing the dates

made and amounts spent in order to demonstrate what rental amounts have and have not been paid, and in order to disclose the total cost of all the works which they state they carried out to the Property and which they assert they agreed with the Applicant would be deducted from the rental due.

The Applicant was required to provide:

1. A full rent arrears statement showing the dates due and amounts of rental payments due since the start of the lease to date, and listing all the rent payments made by the Respondents showing the dates made and amounts paid.

The said documentation was to be lodged with the Chamber no later than close of business on 7th June 2019.

[15] The information sought in the Direction should disclose what rental amounts had and had not been paid, and disclose the total cost of all the works which the Respondents stated they carried out to the Property and which they asserted they agreed with the Applicant would be deducted from the rental due.

[16] Mr Ritchie indicated that he would take the Applicant's instructions on the Respondents' position, and advise the Tribunal of the Applicant's response at the next calling of this application.

[17] A continued Case Management Discussion was held on 2nd July 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant did not appear, but was again represented by Mr Ritchie, solicitor. The Respondents did not appear, and were not represented.

[18] The Respondents had, however, e-mailed the Tribunal at 6.21am on 2nd July 2019 indicating that due to a family emergency, involving them requiring to seek urgent medical treatment for their sick child, they would unfortunately be unable to attend.

[19] The Tribunal advised Mr Ritchie of this information, and continued with the Case Management Discussion in the absence of the Respondents, whilst noting and understanding the reason for their non-attendance.

[20] Mr Ritchie drew the Tribunal's attention to the Inventory of Productions for the Applicant which he had lodged in response to the Direction and which has been intimated to the Respondents. This contained an updated rent arrears statement disclosing the current rent arrears figure, together with supporting bank statements.

[21] Mr Ritchie advised that no cash payments were made, and that all payments by the Respondents were made by bank transfer and were shown on the statements.

[22] The Tribunal noted that three payments made by the Respondents to the Applicant dated 4th April 2018 for £100.00, 17th April 2018 for £200.00, and 27th April 2018 for £200.00 and shown in the bank statement of 1st May 2018 appeared to have been accidentally omitted from the rent arrears statement.

[23] Mr Ritchie on checking the statement accepted that there had been a small error, and that those payments totalling £500.00 should be added to the total figure of rent received increasing that to £12,470.00. As a result, the balance due of £17,480.00 shown in the rent arrears statement should consequently be reduced to £16,980.00.

[24] The Tribunal allowed the sum sought in this application to be amended to the figure of £16,980 in terms of the updated rent arrears statement provided, and Mr Ritchie undertook to provide a corrected rent arrears statement showing this amount.

[25] Mr Ritchie also confirmed that he had taken the Applicant's instructions on the assertions made by the Respondents, and that the Applicant did not accept those. The Applicant's position is that no such agreement was made regarding reduction of the rent in consequence of the cost of any work being carried out by the Respondents to the Property.

[26] The Tribunal noted that the Respondents had so far failed to respond to its Direction of 22nd May 2019, and had failed to provide any of the evidence and information they were directed to submit by 7th June 2019.

[27] There was clearly a sharp disagreement concerning the facts in this application, and accordingly the Tribunal required to set a Hearing to take evidence on the parties' respective assertions in order to make a determination.

[28] On 4th July 2019, the Applicant lodged a second Inventory of Productions comprising an amended and corrected rent arrears statement, which also updated the amount outstanding as at that date to £17,930.00 and sought to amend the application to that amount.

[29] Rule 14A(1) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended concerns requests to amend an application in respect of matters other than new issues, which must be intimated to the Respondent and the Tribunal at least 14 days prior to a Hearing.

[30] The Tribunal considered that amendment of the sum claimed falls within this Rule, and that the request was made in excess of 14 days prior to the Hearing date assigned of 13th August 2019, and accordingly consented to the amendment being made.

[31] The Tribunal was contacted by e-mail on 8th August 2019 by Ms Johnston, solicitor, of the Legal Services Agency, advising that she had met with the Respondents earlier that day, was acting for them, and was in the process of applying for legal aid for them.

[32] Ms Johnston advised that she was unable to provide representation for the Respondents on 13th August 2019 due to the short notice she had of the Hearing, and requested the Hearing be postponed for a period of approximately six weeks.

[33] The Tribunal intimated this request to the Applicant's representative, who (perhaps quite understandably, from the Applicant's perspective) opposed the request, and consideration of it was continued until the morning of the Hearing.

[34] A Hearing was held on 13th August 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant appeared, and was again represented by Mr Ritchie, solicitor. The Respondents again appeared, and were not represented.

[35] The Tribunal invited the parties to make representations regarding the Respondents' request to postpone the Hearing.

[36] The Respondents explained that the First Respondent had earlier this year lost his employment, and was suffering ill-health. He was unfit to work, was on prescribed medication, and was receiving regular medical treatment from a psychiatrist and community psychiatric nurse. They produced a short letter from his community psychiatric nurse giving a brief outline of his difficulties.

[37] Due to the First Respondent's condition, he had had difficulty in progressing with obtaining representation for this application. The Second Respondent was helping him, and also looking after the Respondents' three young children, [REDACTED]
[REDACTED]

[37] It became apparent that the Respondents' were struggling with the process of obtaining benefits for housing, which to date had not been provided to them despite their stated best efforts to obtain those.

[38] They candidly accepted that they had not progressed with this matter as quickly as would be desirable, but had been facing multiple difficulties and needed legal advice and representation in order to properly put across their position. They now had a lawyer who was acting for them, and they needed time to go through matters with her and to prepare for a hearing.

[39] Mr Ritchie and the Applicant opposed the postponement request. They noted that this application was raised in December 2018. The first scheduled Case Management Discussion had been postponed at the Respondent's request to obtain legal advice. The Respondents had failed to comply with the Tribunal's earlier direction to them. Rent arrears now stood at approximately £18,000.00, and the Applicant was suffering severe financial hardship as a result of the Respondents' continuing non-payment of rent. Finally, this request was intimated only five days in advance of this Hearing, and came far too late.

[40] The Tribunal rose to consider the submissions by the parties, and then resumed the Hearing.

[41] Rule 28 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended allows the Tribunal discretion on its own initiative or on an application by a party, to adjourn a Hearing.

[42] The Tribunal had considerable sympathy with the objections from the Applicant, which are entirely understandable from his perspective, but nonetheless considered it to be reasonable to adjourn the Hearing in the whole circumstances in terms of Rule 2 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

[43] The Tribunal was persuaded that it was in the interest of justice, and consistent with its overriding objective of dealing with the proceedings justly, and ensuring, so far as practicable, that the parties are on equal footing procedurally and are able to participate fully in the proceedings in terms of Rule 2 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, to allow the Respondents one last opportunity to be represented by a solicitor in this application.

[44] Albeit that postponing this matter would undoubtedly cause delay, the Tribunal considered that this factor was narrowly outweighed by the consideration of ensuring so far as practical that the Respondents are able to fully participate.

[45] The First Respondent in particular suffers mental health difficulties for which he is receiving treatment, and would undoubtedly benefit from representation in what is a complex legal matter. The Tribunal also felt it would assist for the First Respondent to obtain a medical report to identify the medical condition which he suffers, any medication which he is being prescribed for that, and any reasonable adjustments which he might require in relation to these proceedings. The First Respondent indicated that he would be content to do so.

[46] The Tribunal considered that the prejudice to the Applicant in granting a final postponement of this Hearing was less than that to the Respondents of insisting on its proceeding today, in circumstances where they have a lawyer acting for them and admit that they are struggling to deal with this matter without assistance.

[47] For these reasons the Tribunal granted the postponement request. After so doing, the Tribunal clerk identified a date with the Tribunal members, the parties, and both their representatives of 25th October 2019, when all were available.

[48] The Respondents indicated that they believed that the Applicant was not listed on the Register of Landlords as landlord of the Property. The Tribunal was also unable to locate him as being listed thereon, albeit that he maintains that he was.

[49] The Respondents indicated that they had taken pictures of the Property when they moved in showing its condition then, and subsequently took pictures of it after carrying out various repair and remedial works. The Respondents also indicated that they had received an award of Universal Credit.

[50] In consequence, the Tribunal issued a second direction dated 13th August 2019 to the parties.

The Applicant was required to provide:

1. Details confirming the Applicant's registration as landlord of the Property on the Register of Landlords.

The Respondents were required to provide:

1. A letter or report from the First Respondent's GP or psychiatrist identifying the medical condition which the First Respondent suffers, any medication which he

is being prescribed for that, and any reasonable adjustments which he might require in relation to these proceedings.

2. Pictures of the Property taken by the Respondents at the time they took entry to it showing its condition at that time, and subsequent pictures taken by the Respondents of the Property showing the remedial work carried out to it by them.
3. Receipts from the Applicant given to the Respondents in respect of cash payments of rental paid by them to him.
4. The Universal Credit award letter they have received in respect of state benefits paid to them.
5. A rent statement showing the dates and amounts of all rent payments they have made to the Applicant since the start of the lease to date, and listing all the works which they have carried out to the Property and showing the dates and amounts spent thereon in order to demonstrate what rental amounts have and have not been paid, and in order to disclose the total cost of all the works which they state they have carried out to the Property and which they assert they agreed with the Applicant would be deducted from the rental due.
6. All relevant vouchings, receipts or other evidence in writing which they might have of the cost of all the works which they state they have carried out to the Property.

The said documentation was to be lodged with the Chamber no later than close of business on 11th September 2019.

[51] The Applicant complied with the direction. The Respondents produced a universal credit award letter, a selection of photographs said to show the condition of the Property prior to their undertaking any work to it, and one invoice for £350.00 stating "Replace fan". They did not comply with the remainder of the direction.

[52] A Hearing was held on 25th October 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow, at which the parties appeared, and at which the Tribunal commenced hearing evidence. The Applicant was represented by Mr Ritchie, solicitor, and the Respondents were not represented. The Hearing did not conclude and was further continued.

[53] As a result of issues raised by the Respondent at the Hearing, the Tribunal issued a third Direction dated 25th October 2019.

The Applicant was required to provide:

1. Copy of all landlord electrical safety certificates in relation to the Property from December 2016 to date.
2. Copy of all gas safety certificates in relation to the Property from December 2016 to date.
3. Copy of the homebuyers' report provided to the Applicant at the time of his purchase of the Property.
4. Copies of all receipts, invoices, correspondence and other documentation disclosing what work was carried out to the Property after the Applicant's purchase of it and prior to the Respondents commencing their lease of it by the

builders and other contractors which the Applicant instructed.

The Respondents was required to provide:

1. A letter or report from the First Respondent's GP or psychiatrist identifying the medical condition which the First Respondent suffers, any medication which he is being prescribed for that, and any reasonable adjustments which he might require in relation to these proceedings.
2. Pictures of the Property taken by the Respondents at the time they took entry to it showing its condition at that time, and subsequent pictures taken by the Respondents of the Property showing the remedial work carried out to it by them.
3. Receipts from the Applicant given to the Respondents in respect of cash payments of rental paid by them to him.
4. A rent statement showing the dates and amounts of all rent payments they have made to the Applicant since the start of the lease to date, and listing all the works which they have carried out to the Property and showing the dates and amounts spent thereon in order to demonstrate what rental amounts have and have not been paid, and in order to disclose the total cost of all the works which they state they have carried out to the Property and which they assert they agreed with the Applicant would be deducted from the rental due including the total amount of money which they contend should be deducted from the rental due.
5. All relevant vouchings, receipts or other evidence in writing which they might have of the cost of all the works which they state they have carried out to the Property.

The said documentation was to be lodged with the Chamber no later than close of business on 22nd November 2019.

[54] The Applicant complied with the Direction. The Respondents did not.

[55] The parties advised the Tribunal after the Hearing of 25th October 2019, that they hoped to resolve their dispute, and asked for the Tribunal to set a Case Management Discussion for some period of time ahead to allow them to do so.

[56] That Case Management Discussion took place on 9th March 2020 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant did not appear, but was again represented by Mr Ritchie, solicitor. The Respondents again appeared, and were not represented.

[57] The parties advised the Tribunal that the Respondents had been due to move to alternative accommodation, but unfortunately that arrangement had fallen through. However, they hoped they had secured accommodation at a different address, and were in the process of finalising that.

[58] Both parties invited the Tribunal to continue this matter to a further Case Management Discussion in April to allow the Respondents to complete their intended move of accommodation. They anticipated that matters could be resolved between them once the Respondents had completed their house move.

[59] Rule 28 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended allows the Tribunal discretion on its own initiative, or on an application by a party, to adjourn a Case Management Discussion.

[60] The Tribunal considered that in these circumstances it would be appropriate to continue the Case Management Discussion to a date, time and venue to be confirmed to the Parties and the Applicant's representative by the Tribunal in writing.

[61] As a result of the coronavirus pandemic, and the lockdown imposed in the United Kingdom as a consequence thereof, the setting of that continued Case Management Discussion was substantially delayed. The Parties were subsequently notified with the details of a Tele-Conference and provided with dial-in details.

[62] A continued Case Management Discussion was held at 14.00 on 17th July 2020 by Tele-Conference. The Applicant did not participate, but was represented by Mr Moffat, solicitor, who had taken over acting for the Applicant after Mr Ritchie's retirement from legal practice. The Respondents again participated, and were not represented.

[63] Mr Moffat advised the Tribunal that as a result of Mr Ritchie's retirement during the lockdown period, he had taken over Mr Ritchie's work in circumstances which were more problematic than normal. Owing to the understandably difficult circumstances caused by the coronavirus pandemic, he had not yet had a chance to discuss matters in detail with the Respondents.

[64] The Respondents advised the Tribunal that the accommodation which they had hoped to obtain had not worked out, and that they were struggling to find alternative accommodation due to the problems associated with the lockdown and restrictions caused by the coronavirus pandemic, despite their stated best efforts in that regard. They recognised the problems this might cause to the Applicant, and wished to discuss making some payment towards rental to the Applicant until they were able to obtain alternative accommodation.

[65] The Tribunal adjourned for fifteen minutes, to allow Mr Moffat and the Respondents to discuss matters, and then resumed the continued Case Management Discussion.

[66] Mr Moffat and the Respondents advised that they had had a helpful discussion, and both requested that the Tribunal again continue this application for about six weeks to enable them to attempt further to resolve matters.

[67] Rule 28 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended allows the Tribunal discretion on its own initiative, or on an application by a party, to adjourn a Case Management Discussion.

[68] The Tribunal considered that in these highly unusual and unprecedented circumstances it would be appropriate to again continue the Case Management Discussion to a further date, to allow discussions and attempts to resolve matters to progress after the interruptions caused by the coronavirus pandemic.

[69] A further continued Case Management Discussion was held at 14.00 on 25th August 2020 by Tele-Conference. The Applicant did not participate, but was represented by Miss Allanson, solicitor. The Respondents again participated, and were not represented.

[70] Miss Allanson explained that a resolution of this dispute by agreement between the parties had not proved possible, and that the Applicant in those circumstances sought a Hearing in order that the Tribunal can hear evidence on the various issues in dispute between the parties.

[71] The Respondents expressed disappointment that a resolution had not proved possible, but agreed in those circumstances that a Hearing would be required for the Tribunal to decide upon the facts which it accepted.

[72] The Respondents advised that they were considering lodging a repairing standards application with the Tribunal against the Applicant, but were seeking advice upon this, and had not yet done so.

[73] Both parties agreed that it would assist matters if the Tribunal issued a Direction for them both to provide written representations outlining and explaining their respective positions with regard to this application, and the Tribunal agreed to do so.

[74] The Tribunal noted that most elements of its previous Directions in this application had not yet been complied with by the Respondents, and incorporated those into the Direction it issued.

[75] The Tribunal issued a fourth Direction dated 25th August 2020.

The Applicant was required to provide:

1. Written representations outlining and explaining his position in support of the sums sought in this application.

The Respondents were required to provide:

1. Written representations outlining and explaining their position in relation to the sums sought in this application.
2. A letter or report from the First Respondent's GP or psychiatrist identifying the medical condition which the First Respondent suffers, any medication which he is being prescribed for that, and any reasonable adjustments which he might require in relation to these proceedings.
3. Pictures of the Property taken by the Respondents showing the remedial work carried out to it by them.
4. Any receipts from the Applicant given to the Respondents in respect of cash payments of rental paid by them to him.
5. A rent statement showing the dates and amounts of all rent payments they have made to the Applicant since the start of the lease to date, and listing all the works which they have carried out to the Property and showing the dates and amounts spent thereon in order to demonstrate what rental amounts have and have not been paid, and in order to disclose the total cost of all the works which

they state they have carried out to the Property and which they assert they agreed with the Applicant would be deducted from the rental due including the total amount of money which they contend should be deducted from the rental due.

6. All relevant vouchings, receipts or other evidence in writing which they might have of the cost of all the works which they state they have carried out to the Property.

The said documentation was to be lodged with the Chamber no later than 14 days prior to the Hearing date set by the Tribunal in this application.

[76] Finally, Miss Allanson confirmed that the sum sought in this application has changed, and that the Applicant would lodge an updated rent arrears statement in advance of the Hearing, together with any application to amend the sum sought in terms of Rule 14A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

[77] At the conclusion of the Case Management Discussion, Miss Allanson and the Respondents both gave the Tribunal clerk a list of dates when they were unavailable for the Hearing to be set. The Tribunal noted those dates and set a date which when parties had indicated that they were available.

[78] The Applicant complied with the Direction timeously, and provided full written representations together with an updated rent arrears statement disclosing rent arrears totalling £32,180, and an application to amend the sum sought to that amount. The Applicant's solicitor informed the Tribunal that the Applicant would conduct the Hearing himself. The Respondents did not comply with the Direction.

[79] The Respondents telephoned the Tribunal on 1st October 2020 stating that they wished to seek a postponement of the upcoming Hearing, and were advised that they should submit their request in writing.

[80] Subsequently, the Respondents e-mailed the Tribunal on 9th October 2020 as follows:

"To whom it may concern

I am writing this email following our telephone conversation a couple of weeks ago where I requested a change of time and date for the hearing scheduled for 19/10/2020 as I have not heard a response to the request I made. After receiving the letter from the tribunal I realised the date set for this hearing is scheduled for the same time as an appointment that had already been issued [REDACTED]

[REDACTED] This is an important appointment especially as we are going into the winter season compounded by the COVID 19 situation. I have tried to get the times changed but there was not much flexibility around that for the same day and any later dates

would be risking the health of a child. I am sending this email as a formal request to have the hearing date changed. I am attaching the letter confirming [REDACTED] appointment.

Kind regards

Mrs McDonald”.

[81] The Respondents attached a copy of a hospital appointment letter from Monklands Hospital, Airdrie, with appropriate redaction of names, which confirmed an appointment for the Respondents’ [REDACTED] at 9.20am on 19th October 2020. That letter was dated 20th August 2020.

[82] The Tribunal intimated the postponement request to the Applicant, and asked the Respondents if it would assist to alter the commencement time of the Hearing to 11.30, 12.00 or 14.00 to allow the Respondents to attend the hospital appointment with their son.

[83] The Applicant responded strongly objecting to the request. He noted that rent arrears were substantial, that there had been repeated delays to the resolution of the application caused by the Respondents, that he was on the brink of bankruptcy as a result of the arrears, that the Respondents had made no payments of rent for two years, and that he was suffering stress as a result of the process.

[84] The Respondents replied to the Tribunal’s enquiry concerning altering the commencement time as follows:

“Thank you for getting back to us. Is it possible to have a different day as we will be doing a [REDACTED] test after the appointment. [REDACTED] has a hard day on days like this and it tends to be overwhelming.

Kind regards

Cynthia”.

[85] After careful consideration of the request, and having regard to all the circumstances including the history of this Application, the Tribunal refused the request to postpone the Hearing, but altered its commencement time from 10.00 to 14.00 to allow the Respondents to take their [REDACTED] to his appointment.

[86] The Respondent responded to the Tribunal’s decision by e-mail of 16th October 2020 as follows:

“Thank you for your email regarding postponement of the hearing. The language used by the applicant was offensive to say the least stating that 'I am using [REDACTED] illness

to gain an advantage.' The applicant should not be making judgements to taint my character especially when it involves [REDACTED]. If that is what he would do or has done then it is wrong for him to assume that everyone does the same. As this is on court records I would like to request that the applicant apologise for such offensive and prejudiced language. I too would like this case to be completed as it has taken a toll on everyone hence I would not be requesting a different date if i had an alternative.

As stated in my previous email, I contacted the office as soon as I received the letter from the tribunal to advise that the 19th was not a good day as illustrated by the hospital appointment letter, that appointment was issued prior to the tribunal court hearing date. In the previous meeting when asked which dates were not suitable we had highlighted the dates knowing my husband had a very sick relative that he had to attend to and since then this relative has died (see doc attached). My husband is not available, meaning I do not have anyone else to fill in. While I do appreciate that the tribunal tried to make accommodations by pushing the hearing to 1400hrs, this is not a good time due to the school run at this time and again I do not have anyone to help me with this. Even if i could sit in a car somewhere and make the call for the meeting

[REDACTED] I cannot emphasize enough that the 19th of October is a day when it would be nearly impossible for me to cope and be fully present in the hearing which is why I have requested a different day, it does not have to be too long in the distance, and as previously stated I too want this to come to a conclusion.

I sincerely hope that you can understand my predicament and while I can understand the distress this is causing to the applicant, the 19th is just not a suitable day.

Kind regards

Mrs McDonald".

The Hearing

[87] A Hearing was held at 14.00 on 19th October 2020 by Tele-Conference. The Applicant participated, and was not represented. He was accompanied by his friend, Mr Wasim. The Second Respondent, Mrs McDonald, participated, and represented her husband, the First Respondent. The Respondents were not otherwise represented.

[88] The Applicant explained that he was representing himself at the Hearing, as he could no longer afford the cost of his solicitor. He adopted his solicitor's written submissions.

[89] Mrs McDonald again asked the Tribunal to adjourn the Hearing. She explained that she was in her car [REDACTED], and was about to go and collect her [REDACTED] two children from school. Her husband was not available as he was away from home as a result of the death of a relative.

[90] Mrs McDonald stated that she could not conduct a Hearing in front of her children as it would cause them great distress.

[91] The Tribunal explained to Mrs McDonald its duties in relation to the overriding objective to deal with proceedings justly. It explained that due to (1) the exceptionally lengthy delays in this application being disposed of; (2) the number of previous adjournments sought and granted to the Respondents; (3) the Respondents' repeated failures to comply with the Tribunal's directions; (4) the Respondents' repeated failures to provide any detailed evidence to support or even quantify their position as to what amounts might be due by them in rent to the Applicant; (5) the large monetary value of the claim and its progressive increase due to the delay in dealing with this matter; and (6) the prejudice a further postponement would cause to the Applicant, it was not prepared to adjourn this application again.

[92] The Tribunal explained that if the Respondents were unable to participate, it was entitled to proceed in their absence and take account of the Respondents' position in doing so.

[93] Mrs McDonald then suggested that if the Hearing was postponed, the Respondents would offer to make payment of £500.00 to the Applicant to compensate him for the delay. The Applicant refused this offer, explaining that every offer to resolve issues that the Respondents had made had come to nothing, and he did not believe that this offer would be adhered to if he accepted it.

[94] After the Applicant's refusal of her offer, and the Tribunal's refusal of her request to adjourn the Hearing, Mrs McDonald stated that she would participate in the Hearing.

[95] The Tribunal commenced hearing evidence from the Applicant. He adopted his solicitor's submissions. He explained that he had entered a lease agreement with the Respondents in respect of the Property with a commencement date of 2nd December 2016. In terms of the agreement, monthly rental was to be paid of £950.00.

[96] The rent arrears now totalled £32,180.00 as shown in the updated rent arrears statement provided to the Tribunal, and the Respondents had made no payments of rent at all since 5th September 2018. The Applicant denied that he had agreed to any deductions being made in respect of work which might be carried out to the Property by the Respondents.

[97] Mrs McDonald commenced cross-examining the Applicant for a very short period, before asking the Tribunal to adjourn the Hearing till after 4pm to allow her to collect her two other children from school and return home.

[98] The Tribunal explained that it was not prepared to adjourn, as it would normally rise for the day at 4pm, and it wished further progress to be made with the evidence. Mrs McDonald enquired what would happen if the Hearing was not concluded, and the Tribunal advised that although it might sit past 4pm for a short time to conclude matters, if longer was required, then it would have no option but to continue matters to a further date which would likely be in about six weeks' time.

[99] At that point, Mrs McDonald left the tele-conference without warning. The Tribunal waited for 5 minutes to allow her to rejoin, but she did not. It then proceeded with the Hearing in her absence.

[100] As it commenced hearing the Applicant's submissions inviting the Tribunal to grant the order sought, the Tribunal clerk was contacted by a Tribunal case worker advising that he had just concluded a short telephone call with Mrs McDonald in which she stated that she had attempted to rejoin the tele-conference but had not been allowed to join. The caseworker had advised her that she needed to dial back in to the tele-conference.

[101] The Tribunal clerk advised that the tele-conference facility would have alerted her to anyone attempting to dial into the tele-conference, and that no-one had done so since Mrs McDonald left it.

[102] The Tribunal waited for approximately five minutes from receiving the message from the caseworker whilst it listened to the Applicant conclude his submissions. As Mrs McDonald had not rejoined the call, it then proceeded to consider its decision based upon the application, the papers, and the submissions of the parties.

[103] After doing so, the Tribunal granted the order sought by the Applicant for payment of the sum of £32,180.00. Whilst explaining the procedural mechanisms relating to the issuing of the written order and statement of reasons, Mrs McDonald rejoined the tele-conference at 3.56pm.

[104] The Tribunal advised her that it had granted the order sought. Mrs McDonald asserted that she had been cut off due to her mobile phone battery running out of charge. However, she then explained that she had plugged it into the charger in her car and called back, but could not rejoin the tele-conference and had then rung the Tribunal's caseworker. She gave no explanation for her delay in then dialling back in to the call, save that she had been engaged in dealing with her children.

[105] The Tribunal explained that the order had been granted, and it could not now change its decision. Mrs McDonald expressed her view that she had been denied a fair hearing, and advised that she would appeal. The Tribunal explained to her the procedure for doing that.

Statement of Reasons

[106] 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.”

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

[108] The Tribunal considered the terms of the short assured tenancy agreement, the rent arrears statement, all of the papers, and the parties submissions, and was satisfied that this disclosed an outstanding balance due by the Respondents to the Applicant in respect of rent arrears to the date of this application of £32,180.00. The lease agreement provides that rent of £950.00 per month is payable in advance.

[109] The Respondents did not lead any evidence. The Tribunal considered their earlier submissions outlining their defence to the claim for rent, which appeared to amount to an assertion that the parties had agreed at the commencement of the lease that the Respondents would be entitled to set off the cost of all remedial and upgrading work which the Applicant authorised them to make to the Property against the rent otherwise due.

[110] The Applicant in his evidence vehemently denied that there was any such agreement between the parties. He referred to the productions he had lodged in response to the third Direction from the Tribunal as evidence of the satisfactory condition of the Property in support of his evidence.

[111] By contrast, as earlier noted, the Respondents have never indicated how much rent (if any) they accept is due by them to the Applicant, and how much they contend they are entitled to withhold as a result of work they carried out to the Property. They have never provided any information regarding what work was carried out, when any such work was done, and the cost of any such work.

[112] In the absence of any evidence from the Respondents, or indeed any detail whatsoever even in relation to the true amount they contend is due by them to the Applicant, the Tribunal had little option but to accept the largely uncontested evidence of the Applicant.

[113] The Tribunal would note that it has issued a total of four Directions to the Parties, and that the Respondents have never at any point complied with those to any material extent by providing the evidence and information critical to their arguments against their liability for the sums sought by the Applicant. Indeed, they did not even provide any form of written representations in advance of the Hearing, as they were directed to do by the Tribunal, to give the Tribunal and the Applicant fair notice of their position.

[114] In the recent case of *A W, Applicant* [2018] CSIH 25, an Extra Division of the Inner House of the Court of Session quoted with approval the guidance contained in the Supreme Court decision of *Barton v Wright Hassall LLP* [2018] 1 W.L.R. 1119 in

relation to there being no lower standard of compliance with rules and procedure for unrepresented parties. That guidance is in the following terms:

"18 ... In current circumstances any court will appreciate that litigating in person is not always a matter of choice. At a time when the availability of legal aid and conditional fee agreements have been restricted, some litigants may have little option but to represent themselves. Their lack of representation will often justify making allowances in making case management decisions and in conducting hearings. But it will not usually justify applying to litigants in person a lower standard of compliance with rules or orders of the court. The overriding objective requires the courts so far as practicable to enforce compliance with the rules ... The rules do not in any relevant respect distinguish between represented and unrepresented parties ... it is now well established that the fact that the applicant was unrepresented at the relevant time is not in itself a reason not to enforce rules of court against him ... The rules provide a framework within which to balance the interest of both sides. That balance is inevitably disturbed if an unrepresented litigant is entitled to greater indulgence in complying with them than his represented opponent. Any advantage enjoyed by a litigant in person imposes a corresponding disadvantage on the other side, which may be significant if it affects the latter's legal rights ... Unless the rules and practice directions are particularly inaccessible or obscure, it is reasonable to expect a litigant in person to familiarise himself with the rules which apply to any step which he is about to take.

42... there cannot fairly be one attitude to compliance with rules for represented parties and another for litigants in person, still less a general dispensation for the latter from the need to observe them. If, as many believe, because they have been designed by lawyers for use by lawyers, the [rules of court] do present an impediment to access to justice for unrepresented parties, the answer is to make very different new rules ... rather than to treat litigants in person as immune from their consequences."

[115] With those comments the Tribunal respectfully agrees. Although compared to a Court, the Tribunal is a less formal method of adjudicating upon disputes between parties, has less detailed and prescriptive procedural rules, and is subject to the overriding objective to deal with the proceedings justly, the basic principles of fairness between parties described by the Supreme Court appear equally applicable to the Tribunal. Throughout these proceedings the Applicant has been legally represented, aside from appearing himself at the final Hearing to mitigate the cost of paying his solicitor to do so. Even there, he largely adopted the written submissions and productions carefully prepared by those representing him.

[116] The Tribunal has repeatedly, over approximately eighteen months during which it held in total seven Case Management Discussions and Hearings, been careful to fully explain its procedures and what it required from the Respondents in order to ensure so far as practicable that the parties were on an equal footing procedurally and that the Respondents were able to participate fully in the proceedings. It has issued four Directions to the Respondents directing them to provide the information required of them to make any realistic attempt to establish their legal case, none of which have been in any real sense complied with.

[117] The Tribunal must also in complying with the overriding objective avoid delay. These proceedings were first raised twenty-two months ago. The Respondents have

sought to discharge various previous appearances as earlier narrated, and the Tribunal has until the final Hearing granted those requests to discharge. It has given the Respondents every opportunity to present their case.

[118] Rule 28 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended allows the Tribunal discretion on its own initiative, or on an application by a party, to adjourn a Hearing. Rule 28 provides that a party seeking an adjournment must show good reason why an adjournment is necessary, and the Tribunal may only adjourn a Hearing at the request of a party on cause shown.

[119] The Tribunal refused the final application to postpone the Hearing of 19th October 2020. It has a duty to be fair as between the differing interests of the parties. The Tribunal was not satisfied that Mrs McDonald had shown cause or good reason as to why an adjournment was necessary. These proceedings have been delayed substantially since they were initiated.

[120] The Tribunal did delay the commencement time of the Hearing to accommodate the Respondents' son's medical appointment. Despite that accommodation, the Respondents still attempted yet again to postpone the Hearing to another day. That appeared to be because of routine childcare arrangements in picking up their children from school, which activity they would need to undertake on most days other than weekends and school holidays.

[121] The application to postpone needed to be assessed in the context of the long history of these proceedings as earlier fully narrated and explained. The Tribunal came to the conclusion that the Respondents were always likely to have difficulties caused by their circumstances in attending hearings. It made adjustments to accommodate those difficulties. It was not fair or reasonable to continue to delay these matters further.

[122] Indeed, Mrs McDonald asked that if the Tribunal granted her postponement request, that it should set hearings only for half days in the morning to avoid childcare difficulties. Had the Tribunal granted her request, it is likely that these proceedings would not be concluded until well into 2021.

[123] The Tribunal was ultimately unconvinced by Mrs McDonald's assertions at the Hearing, and did not accept them. She stated that she would not be able to participate at the Hearing if it was not postponed. When it was not postponed, she did participate. She then without warning left the call immediately after the Tribunal confirmed in response to a question from her that if the Hearing did not conclude by approximately 4pm, then it would be continued to another date.

[124] Mrs McDonald then returned to the call at 3.56pm, explaining that her mobile phone battery had run out of power. However, she then asserted that she had been unable to rejoin the call. On enquiry, she stated that she had a car phone-charger which she was able to use to attempt to rejoin the call. She gave no explanation as to why she could not have used that whilst conducting the call to avoid her phone battery running out of power.

[125] Further, the Tribunal clerk was able to confirm that Mrs McDonald had not made any attempt to rejoin the call as she stated. Any such attempt would have registered on the equipment used. Mrs McDonald was very familiar with the procedure and process, having successfully used it on a number of previous occasions and earlier that day. If she had been unable to rejoin for some reason, that does not explain why after contacting the case worker who advised her to dial back into the call, she then made no attempt to do so for five to ten minutes, and until four minutes before the time she had just been advised by the Tribunal it would conclude for the day.

[126] The Tribunal, with regret, came to the conclusion that Mrs McDonald was attempting to postpone the Hearing to a further date using a number of explanations which did not stand up to scrutiny for the reasons explained. It would have been unfair to the Applicant, particularly standing the procedural history of this application, to allow her to succeed in such an exercise.

[127] For all these reasons, the Tribunal refused to postpone the resolution of this matter any further, and after careful consideration of all the evidence made an order for payment of the sum sought.

Decision

[128] In these circumstances, the Tribunal made an order for payment by the Respondents to the Applicant of the sum of £32,180.00.

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.



Neil Kinnear

Legal Member/Chair

28/10/20

Date