



**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/21/2584

**Re: Property at Kendrum Park House, Bridge Of Tilt, Blair Atholl, Pitlochry, PH18
5SX (“the Property”)**

Parties:

**Mr Edward Anthony Richards, Mrs Patricia Mary Richards, 73 Hillside Crescent,
Enfield, Middlesex, EN2 0HP (“the Applicant”)**

**Mr Peter Aylward, Kendrum Park House, Bridge of Tilt, Blair Atholl, Pitlochry,
PH18 5SX (“the Respondent”)**

Tribunal Members:

Andrew McLaughlin (Legal Member) and Mike Scott (Ordinary Member)

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

Background

The Applicant seeks a Payment Order in respect of arrears of rent said to have been accrued by the Respondent under a tenancy between the parties. The sum had latterly been formally amended to an updated figure of £4,900.00.

The Respondent had submitted representations in the form of an email dated 8 December 2021 opposing the Application and again confirmed that opposition at the Case Management Discussion (CMD) that took place on 20 December 2022.

At the CMD and in his written representations the Respondent had made reference to bills that the Respondent alleged to have paid on behalf of the Applicants that ought to be taken into account in the assessment of any sums found to be due to the Applicants. The Respondent contended that if these matters were properly accounted for, then the Applicants would owe him money.

The Respondent also wished for legal advice and described how he had a previous solicitor who had informed the Respondent that he was unable to assist the Respondent with the Tribunal processes.

The Tribunal had decided that the Application should not be determined without an evidential hearing.

Directions were also made obliging the Respondent to lodge any the invoices referred to and to set out in writing the basis of the defence to be relied upon.

Both sides were urged at the CMD to pay close attention to the Directions made.

The Respondent had failed to comply with the Directions made and no further information had been submitted by the Respondent in advance of the Hearing scheduled to take place on 7 February 2022.

The Hearing

The Application called for a Hearing by conference call at 10 am on 7 February 2022. Both Applicants were present with their representative Ms McCartney of Kippen Campbell LLP. The Respondent was also on the call. The Application called alongside a related Application between the parties in respect of an Eviction Order.

The Tribunal began by considering preliminary matters and in particular sought an explanation from the Respondent as to his apparent failure to comply with the Directions made.

The Respondent indicated that he had been suffering from depression and also made references to a failure to secure legal representation and also referred to the stress that the Tribunal process has caused him. Reference was also made to knee surgery which the Respondent appeared to require in the future.

The Respondent's explanations were scattergun and at times the Respondent also referred to an apparent unfairness as a result of the Applicants having a solicitor to represent them. The Respondent also made references to having lodged the relevant invoices in any event.

The Tribunal confirmed that along with the email dated 8 December 2021 the Respondent had attached two pages of a document that appeared to be a statement from an Electrical Contractor. The pages did not provide any detail of what they related to.

The Respondent had not lodged any other invoices with the Tribunal and his position appeared misguided and confused in this regard. The Respondent began liberally

referring to various expenses and invoices which the Tribunal knew nothing about on account of the Respondent having failed to comply with the Direction.

The Tribunal did not find the Respondent's explanations convincing and the Respondent's whole attitude and style of verbal delivery appeared to convey an attitude of contempt and indignation that he was being asked about such matters.

The Tribunal unanimously took the view that the Respondent saw frustrating the process as a legitimate tactic to avoid a decision being made against his interests. The Tribunal were not satisfied that the Respondent had done enough to adhere to the Directions made.

The Tribunal considered that this was a task that could have been achieved relatively simply and the terms of the Directions made were not particularly onerous.

The Tribunal considered that the process should not be frustrated as a result of the Respondent's less than convincing reasons for not complying with the Directions made.

The Tribunal decided to determine the Application based on the information presented and available to the Tribunal today. Given the Respondent's failure to comply with the Directions, the Tribunal decided to take a flexible approach and hear from the Respondent directly and Ms McCartney about the relevant issues rather than by taking evidence in a formal manner.

The Tribunal then adjourned to fully consider matters. The Tribunal made the following findings in fact.

Findings in Fact

- I. *The Applicants let the Property to the Respondent on a short assured tenancy which commenced on 23 September 2011;*
- II. *The contractual monthly rent due was £650.00;*
- III. *The Respondent has fallen into rent arrears and at today's date the sum of £4,900.00 is due as rent but remains unpaid;*
- IV. *The Tribunal have given the Respondent adequate opportunity to produce evidence such as might support the Respondent's position that there are sums which ought to be deducted from this amount;*

- V. *The Respondent has, without good cause, failed to provide the required information such as might allow the Tribunal to properly consider the merits or otherwise of the defence suggested at the CMD;*
- VI. *There is no reasonable basis for considering there is any merit in the Respondent's position.*
- VII. *The sums claimed by the Applicants are lawfully due and remain unpaid.*

Reasons for Decision

Having made the above findings in fact, the Tribunal granted the Application and made a Payment Order in favour of the Applicants in the sum of £4,900.00.

The Applicants sought an award of expenses to be made in their favour. The Tribunal considered this carefully but did not conclude that the Respondent's conduct was such as to merit any award of expenses being made.

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.

Andrew McLaughlin

7th February 2022

Legal Member/Chair

Date