

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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/23/0174**

**Re: Property at 165 Talla Road, Glasgow, G52 2BA (“the Property”)**

**Parties:**

**Mr Nicholas Lewis, 14 Caddells Row, Edinburgh, EH4 6HY (“the Applicant”)**

**Miss Deborah Gray, 165 Talla Road, Glasgow, G52 2BA (“the Respondent”)**

**Tribunal Members:**

**Valerie Bremner (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 a payment order be granted against the Respondent and in favour of the Applicant in the sum of Four Thousand Two Hundred and Seventy Pounds Only ( £4270).**

**Background**

1.This application for a payment order in terms of Rule 70 of the Tribunal rules of procedure was first lodged with the Tribunal on 18<sup>th</sup> January 2023 along with a related application for a possession order with reference HPC/EV/23/0090.The applications were accepted by the Tribunal on 1<sup>st</sup> March 2023.A case management discussion was fixed for 21<sup>st</sup> April 2023 at 10am.

**Case Management Discussion**

2.The Applicant did not attend the case management discussion but was represented by Mr Haq and Ms Nivison, both of Martin and Co. The Respondent did not attend but the Tribunal noted that the application and papers, including the date and time of the

case management discussion had been served on her by Sheriff officers placing the papers through the letterbox at the property. The Tribunal was satisfied that fair notice had been given to the Respondent and that the Tribunal could proceed in her absence.

3.The Tribunal had sight of the application, two short assured tenancy agreements, one starting in 2011 and the other in 2014, a statement of rent arrears and an e mail from the Applicant' representative to the Tribunal on 21<sup>st</sup> March advising that rent arrears at the property in terms of the 2014 tenancy agreement now stood at £5820.

4.Mr Haq for the Applicant advised that the Respondent had originally entered into a short-assured tenancy at the property with a previous landlord with effect from 21<sup>st</sup> February 2011 for a period of six months, but the tenancy had continued on a monthly basis thereafter. A second short assured tenancy agreement had been entered into on 21<sup>st</sup> February 2014 when the property was being sold to the Applicant. In May 2014 the original landlord had sold the property to the Applicant and Martin and Co as agents of the landlord had advised the Respondent by email and by phone that the Applicant had bought the property and would now be the landlord for the property as well as having a new tenancy agreement put in place from 21<sup>st</sup> February 2014. There were no changes to any of the pre-existing arrangements including the payment of monthly rent of £450 to Martin and Co on behalf of the Applicant. This new tenancy between the parties had continued on a monthly basis after the expiry of its initial 6-month term on 21<sup>st</sup> August 2014.

5.It was not known if the Respondent had a friend or partner staying at the property. There were no medical issues known to be affecting the Respondent. The Respondent had been in rent arrears over a lengthy period of time. The Applicant had not pursued the Respondent for rent arrears early on after he bought the property but later on in the tenancy the Respondent had been contacted regularly regarding the rent arrears. In March 2023 she had made contact with the landlord regarding making payment. She had raised the issue of a payment plan but had not been back in touch with any offer of payment of the arrears which by March 2023 were said to amount to £5820.The landlord had asked what the payment plan was to be but no further contact was received from the Respondent.

6.Mr Haq for the Applicant accepted that he had not intimated a request to amend the sum being requested by way of a payment order to the Respondent in terms of the Tribunal rules of procedure and indicated that he was prepared to proceed to restrict the claim to the sum of £4890 which had been the sum originally requested in the application.

7.The Tribunal raised the issue of rent arrears which might be being requested in the application which may have fallen due more than 5 years before the application was lodged with the Tribunal. The Tribunal referred to the Prescription and Limitation (Scotland) Act 1973.

## **Relevant Legislation**

### **S6 Prescription and Limitation ( Scotland ) Act 1973**

Extinction of Obligations by prescriptive periods of five years

(1)If, after the appropriate date, an obligation to which this section applies has subsisted for a continuous period of five years—

(a)without any relevant claim having been made in relation to the obligation, and

(b)without the subsistence of the obligation having been relevantly acknowledged,

then as from the expiration of that period the obligation shall be extinguished:

Provided that in its application to an obligation under a bill of exchange or a promissory note this subsection shall have effect as if paragraph (b) thereof were omitted.

(2)Schedule 1 to this Act shall have effect for defining the obligations to which this section applies.

8.The Tribunal explained to the Applicant's representative that one of the obligations to which the section in the legislation refers to is rent. It was noted that in the rent statement lodged by the Applicant there was a rent arrears balance of £620 which was said to have accrued prior to 20<sup>th</sup> January 2018 and Mr Haq accepted that this entry in the rent statement lodged was for rent arrears which had accrued before that date. Mr Haq indicated that no previous claim had been made for this sum and that he was prepared to restrict the claim to rent arrears accrued in the five years before the application was lodged on 18<sup>th</sup> January 2023 and could deduct any amount accrued prior to that period from the sum being requested in the payment order application. The sum being claimed was £4270 ( £4890 - £620).

9.The Tribunal considered that it had sufficient information upon which to make a decision and that the proceedings had been fair.

## **Findings in Fact**

10. The Respondent was originally a tenant at the property by virtue of a short-assured tenancy agreement entered into with the previous owner of the property with effect from the 21st of February 2011 and this tenancy continued on a month-to-month basis after its initial 6-month term.

11. A new short assured tenancy was entered into by the parties when the Applicant was in the process of acquiring ownership of the property in 2014.

12. This short-assured tenancy commenced on 21st of February 2014 for a period of six months and continued on a monthly basis thereafter.

13. The Applicant became landlord of the property by virtue of this agreement.

14. The monthly rent payable in terms of this tenancy is £450 per calendar month.

15.The Respondent is in rent arrears in terms of this tenancy agreement which commenced on 21<sup>st</sup> February 2014 and the sum being claimed for the five years up to the date of the Tribunal application being made is £4270.

16. The Respondent contacted agents on behalf of the landlord in March 2023 to suggest a payment plan, but at no stage made any actual offer of payment towards the rent arrears despite being requested to do so.

17.The sum of £4270 is lawfully due by the Respondent to the Applicant in terms of the tenancy agreement between the parties dated 21<sup>st</sup> February 2014.

### **Reasons for Decision**

18.The Tribunal was satisfied that the rent arrears being claimed were due in terms of a tenancy agreement which commenced on 21<sup>st</sup> February 2014.The copy of this agreement seen by the Tribunal contained the name of the previous owner as landlord but the Tribunal noted that the Respondent had been advised by agents of the change of landlord by email and phone and the Tribunal was satisfied that the Applicant had become landlord by virtue of this agreement and was entitled to seek payment of the rent arrears claimed. There was little information as to the reason for the rent arrears accruing but these had been raised with the Respondent over a period of time. A recent contact by the Respondent to discuss a payment plan had been made but no actual offer of payment towards the rent arrears had been made despite this being requested. The Tribunal considered that it was reasonable to grant the payment order requested.

### **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.**



21/04/23

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**Legal Member/Chair**

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**Date**