



**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/20/0735**

**Re: Property at 16 Pilton Loan, Edinburgh, EH5 2EX (“the Property”)**

**Parties:**

**Mrs Jane Gilbert, The Old Dairy House, Dundas, South Queensferry, EH30 9SS  
 (“the Applicant”)**

**Mr William McIvor, 15 Crewe Crescent, Edinburgh (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member)**

**Decision (in absence of Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant’s Motion to add a Second-named Respondent should be granted and made an Order for Payment by the Respondent and the now Second-named Respondent to the Applicant of the sum of £5,600. The request for interest on the principal sum awarded was refused.**

**Background**

By application dated 25 February 2020, the Applicant sought an Order for Payment against the Respondent in respect of unpaid rent that had become lawfully due by the Respondent to the Applicant. The sum sought was £5,600. The Applicant also sought interest on that amount at 8% per annum from the date of service of the application until payment.

The Application was accompanied by copies of a Short Assured Tenancy Agreement between the Applicant and the Respondent commencing on 23 January 2015 and, if not brought to an end on 23 January 2016, continuing on a monthly basis thereafter until ended by either Party, and a Rent Statement showing arrears as at February 2020 of £5,600, with no payments having been received in the period from August 2019 to February 2020.

By letter dated 10 September 2020, the Applicant sought to include an additional Respondent, namely Ms Rachel Gilbert.

A Case Management Discussion was held on 16 September 2020. As at that date, no notification of the inclusion of Ms Gilbert had been given to her. Accordingly, the Tribunal adjourned to a further Case Management Discussion and issued a Direction to the Applicant to serve a copy of the application and relative paperwork on Ms Rachel Gilbert together with a copy of the Motion to include her as a Second Respondent and to lodge with the Tribunal a Certificate of such Service in advance of the adjourned Case Management Discussion.

On 12 October 2020, the Applicant's solicitors provided the Tribunal with a Certificate of Service on Ms Gilbert on 9 October 2020 and confirmed that they had served a copy of the Application and relevant papers with a copy Motion to include Ms Gilbert as a Second-named Respondent in the action.

Neither the Respondent nor Ms Gilbert lodged any written representations with the Tribunal.

### **Case Management Discussion**

The adjourned Case Management Discussion was held by way of a telephone conference call on the afternoon of 26 October 2020. The Applicant was represented by Ms Ciara Young of Complete Clarity Solicitors & Simplicity Legal, Glasgow. Neither the Respondent nor Ms Gilbert was present or represented.

### **Reasons for Decision**

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

The Tribunal noted that the Direction issued following the Case Management Discussion of 16 September 2020 had been complied with and that Ms Gilbert had made no written representations the Tribunal and had not participated in the adjourned Case Management Discussion. The Applicant had sought on 10 September 2020 to include Ms Gilbert as Second-named Respondent, submitting that she had paid rental sums by way of BACS transfers until around March 2020 and they provided copy bank statements showing such transfers on 2 January, 1 February and 1 March 2019. The Applicant's contention was that the original tenancy agreement allowed for a tenancy to include the named tenant and occupants (if any) but that, even if that was not accepted by the Tribunal, by making these payments, a contractual relationship had been formed between the Applicant and Ms Gilbert. The Applicant stated that Ms Gilbert had resided at the Property with the First-named respondent from the beginning of the tenancy.

The Tribunal did not accept the argument that the original tenancy agreement allowed for a tenancy to include the named tenant and occupants (if any). The wording of the tenancy agreement stated that the tenant was William McIvor and that the tenant agreed not to assign the tenancy to any other person, or sublet the accommodation in whole or in part, or to take in lodgers or allow other persons to share the occupation of the premises, whether or not for payment, without the prior written consent of the landlord. The Tribunal noted, however, that it had seen evidence that Ms Gilbert had been making the rental payments in her own name and that she had not made any representations to suggest that she did not accept that

landlord-tenant relationship existed between her (and the Respondent) and the Applicant and had offered no explanation as to why she had made rental payments if she did not regard herself as a tenant. Accordingly, the Tribunal determined that an implied contract existed, the terms of which were those of the Short Assured Tenancy Agreement between the Parties, and accepted the Motion on behalf of the Applicant that Ms Rachel Gilbert should be added as a Respondent in the present application.

The Tribunal was satisfied that the sum sought had become lawfully due by the First and Second-named Respondents to the Applicant. The Applicant must, however, deduct from that sum any amount that she is holding by way of a deposit paid at the commencement of the tenancy.

The Tribunal refused the Applicant's request for interest on the principal sum from date of service until payment. Rule 41A of the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017, as amended, states that the Tribunal may include interest when making an order for payment, at the rate either stated in the relevant tenancy agreement or ordered by the Tribunal, and running from the date of the decision of the Tribunal. The Tribunal noted that, in the present case, the tenancy agreement did not make any provision for interest on unpaid rent and that Ms Gilbert had only known for a very short time that she might be added as a Respondent. Accordingly, the Tribunal decided to refuse the application for interest.

### **Decision**

The Tribunal determined that the Applicant's Motion to add a Second-named Respondent should be granted and made an Order for Payment by the Respondent and the now Second-named Respondent to the Applicant of the sum of £5,600. The request for interest on the principal sum awarded was refused.

### **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

**26<sup>th</sup> October 2020**

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**Legal Member/Chair**

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**Date**