



**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/21/0051

**Re: Property at 7/2 FERRY GAIT CRESCENT, Edinburgh, EH4 4GS (“the
Property”)**

Parties:

**Ms Linda McKinney, 58 CHRISTIEMILLER AVENUE, Edinburgh, EH7 6SZ (“the
Applicant”)**

**Ms Natasha Henderson, 7/2 FERRY GAIT CRESCENT, Edinburgh, EH4 4GS
 (“the Respondent”)**

Tribunal Members:

Shirley Evans (Legal Member) and Ann Moore (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that determined that the Respondent is in breach of the
tenancy agreement with the Applicant and has failed to pay rent. The Tribunal
accordingly has decided to make an order for payment in the sum of SEVEN
THOUSAND EIGHT HUNDRED AND FIFTY FIVE POUNDS AND SIXTY THREE
PENCE (£7855.63) STERLING. The order for payment will be issued to the
Applicant after the expiry of 30 days mentioned below in the right of appeal
section unless an application for recall, review or permission to appeal is lodged
with the Tribunal by the Respondent.**

Background

- 1. This is an application dated 7 January 2021 for an order for payment of rent
arrears under Rule 111 of the First-tier Tribunal for Scotland Housing and
Property Chamber (Procedure) Regulations 2017 (“the Regulations”).**
- 2. The application was accompanied by a copy of a Private Residential Tenancy
between the parties and a rent statement showing arrears of £5830.63.**

Case Management Discussion

3. The Tribunal proceeded to a Case Management Discussion (“CMD”) on 26 February 2021 by way of teleconference. The Applicant was represented by Ms Caldwell from TC Young, solicitors. The Respondent appeared on her own behalf. On being asked by the Tribunal as to whether she was able to fully participate in the proceedings the Respondent explained that she had health issues including a personality disorder which meant she found it difficult to communicate and interact with others. The Tribunal enquired whether the Respondent wanted an opportunity to take advice from a solicitor or an advice agency. The Respondent declined and stated she was content to proceed. The Tribunal assured the Respondent if she had any questions as the CMD proceeded she could raise these as they arose. In the circumstances the Tribunal was satisfied that the Respondent was able to fully participate in the proceedings.
4. Ms Caldwell explained that the arrears had increased and that in accordance with Rule 14(A) of the Regulations she was seeking to increase the sum sought to £6505.63 and that she had intimated this proposed amendment on the Respondent on 2 February 2021. She also referred to an up to date rent statement which she had lodged with the Tribunal showing current arrears of £7180.63.
5. The Respondent denied she was in arrears. She explained the Property had been managed by Clan Gordon until about 24 March 2020. She had only spoken to the Applicant once by telephone when she had not been happy with the way that Eddie, who was the Applicant’s husband was dealing with a leak at the Property. The Respondent explained Edinburgh City Council paid partial Housing Benefit direct to Clan Gordon. That amount changed depending on her earnings. She also made direct payments to Clan Gordon to make up the rent. Around about June 2020 she had transferred to Universal Credit. Between about May –December 2020 she submitted that she had paid Eddie rent in cash including a lump payment of £3000. He did not give her any receipts and she did not ask for any receipts as she was too trusting. She stated she had bank statements which would show how much she had withdrawn in cash to pay Eddie. Since then the Applicant had served a Notice to Leave on her on the basis the Applicant wanted to sell the Property. The Respondent had not paid rent since December 2020 and claimed the Applicant through her solicitors had offered to write off the arrears if she vacated the Property.
6. In the circumstances, the Tribunal decided to proceed to a hearing for evidence to be heard and to give the Respondent an opportunity to produce the bank statements and other documentation to support her position that cash payments had been made to the Applicant’s husband. The Tribunal also explained to the Respondent that she may wish to seek advice from one of the advice agencies in Edinburgh or from a solicitor to assist her in the hearing.

7. A hearing was thereafter assigned to proceed on 8 April 2021 and parties were advised of that date.
8. On 24 March 2021 the Applicant's solicitor requested that the sum sought be increased to £7855.63 in terms of Rule 14(A) of the Regulations. They also lodged documents in response to a Notice of Direction issued on 15 March 2021.

Notice of Direction

9. On 15 March 2021 the Tribunal issued a Notice of Direction to parties to lodge various documents by 31 March 2021. The Applicant was required to lodge an up to date rent statement showing the current arrears and any cash payments made by the Respondent to the Applicant's husband and any correspondence whether by letter, email, text message or any other means between parties or any representative of the parties relating to rent arrears from April 2020 to date.
10. The Respondent was required to lodge redacted bank statements and any other form of documentary evidence such as text messages or emails showing or tending to show any cash payments made to the Applicant's husband and any other payments towards rent made from April 2020 to date. She was also required to produce a full list of payments of rent which she claimed she had made to the Applicant or the Applicant's husband showing the date of payment, the amount paid and the means of payment from April 2020 to date.
11. In response to the Notice of Direction, the Applicant's solicitors lodged a Third Inventory of Productions on 24 March 2021 comprising email correspondence between Clan Gordon and the Respondent from March 2019 – March 2020, a letter to the Respondent dated 23 March 2021 increasing the sum sought and an up to date rent statement to 10 March 2021.
12. The Respondent emailed the Tribunal on 31 March 2021 seeking further time to lodge documentary evidence as she was waiting for phone logs from her telephone provider. This request was passed over to the Applicant's solicitor.
13. On 1 April 2021 the Applicant's solicitor opposed the Respondent's request for further time to lodge documents on the basis that in terms of Rule 22 of the Regulations any documents had to be lodged 7 days before the hearing and in terms of Rule 23 those documents had to be sent to the other parties 3 days in advance of the hearing. Such documents as the Respondent may lodge would not be lodged timeously or be intimated within 3 days ahead of the hearing due to the Easter weekend. Accordingly there would be insufficient time for the Applicant's solicitors to take instructions ahead of the hearing on 8 April 2021. Further they opposed the request on the basis that the Respondent had not lodged any documents at all including redacted bank statements and a list of payments made.

14. The Tribunal considered matters and on 6 April 2021 refused the Respondent's request on the basis the Applicant was prejudiced by the Respondent not lodging any documents under the Notice of Direction in time. The Respondent provided no explanation for not producing any of the documents in terms of the Notice of Direction including redacted bank statements which the Respondent had stated at the CMD she had and had not given any indication as to how long an extension she was seeking. The Respondent could have lodged the bank statements which she had referred to at the CMD on time. The Tribunal considered Rules 22 and 23 and formed the view the Respondent had the advantage of considering the documents lodged by the Applicant on time, but that by failing to lodge any documents which she stated at the CMD she already had, the Applicant had not had that same opportunity. The Tribunal was of the opinion the Applicant had the right to be given notice of the particulars of the cash payments which the Respondent stated she had made to the Applicant's husband, but had not lodged the list as requested.
15. On 6 April 2021 the Respondent then lodged a number of screenshots, a letter from TC Young, an email dated 13 January 2020 from Clan Gordon and an email dated 22 June 2020 from Eddie McKinney. On 6 April 2021 the Applicant's solicitors lodged a Fourth Inventory of Productions comprising the same email dated 22 June 2020 from Eddie McKinney to the Respondent.

The Hearing

16. The hearing proceeded on 8 April 2021. The Applicant was represented by Ms Donnelly from TC Young, solicitors. The Applicant and her husband Eddie McKinney were also initially on the call but left whilst the Tribunal dealt with preliminary matters. The Respondent appeared on her own behalf.
17. When asked if there were any preliminary matters before proceeding to hear evidence, the Respondent stated that she was in the course of moving properties. She stated she was in a bought property with her partner and children. She stated she had not paid rent for January, February and March 2021 or indeed for April 2021. Her position was that she accepted she was in arrears of 4 months at £675 totalling £2700. She had been signed off work and was offering to clear these arrears at between £50-80 per month and stated she could hand the keys for the Property back to the Applicant by the end of the week.
18. After a short adjournment for Ms Donnelly to take instructions from the Applicant, she made a counter-proposal for settlement. The Applicant was concerned that the figures were too far apart. The Respondent had purchased a property so must have access to funds. The Applicant was accordingly willing to accept payment of £5000 no later than 16 April 2021 in full settlement of the arrears.
19. In response, the Respondent advised the property she was moving into had been purchased with money from her partner's father's inheritance and that it

was a shared equity property purchased through Link Housing Association. The inheritance had been used as a deposit. She had no funds or savings herself. She again stated she could vacate the Property and get the keys back to the Applicant by Sunday 11 April or Monday 12 April if the Applicant accepted the £2700.

20. After another short adjournment for Ms Donnelly to take instructions, Ms Donnelly advised her client wished to proceed to the hearing to pursue the Respondent for the full amount of the arrears. In response the Respondent stated that if that was the case, she would continue to live in the Property until June at the expiry of a Notice to Leave which had been served on her. The Tribunal pointed out to the Respondent that by doing so she would be incurring further arrears of £675 per month which appeared nonsensical if she was in the course of moving already. However the Respondent was steadfast in her position that she had a bit of painting to do at the Property and could with the help of family and friends be out at the end of the week, but as the Applicant would not agree to settle at £2700, she would take her time and would not fully move to the new property in Kirkcaldy until June.
21. Ms Donnelly moved the Tribunal to grant the amendment to increase the sum sought to £7855.63 which had been intimated on the Respondent on 23 March 2021. She had no objection to the screenshots, the letter or the email dated 13 January 2020 lodged by the Respondent on 6 April 2021 being lodged although late. She asked that the Fourth Inventory of Productions being the email from Eddie McKinney to the Respondent dated 22 June 2020 be allowed although late. The Respondent had no objection to either the increase of the sum sought, albeit she did not accept that the sum was due, or to the email of 22 June 2020. The Tribunal accordingly allowed the sum sought to be increased to £7855.63 and allowed the Applicant's and Respondent's documents although lodged late.
22. On being asked by the Tribunal as to whether she felt able to fully participate in the hearing, the Respondent explained that she felt she was at a disadvantage as she did not have any legal knowledge and could not afford a solicitor to represent her. The Tribunal reminded the Respondent that she had been content to proceed with the CMD although she had been afforded the opportunity to take advice from a solicitor or an advice agency. The Tribunal also reminded the Respondent that at the end of the CMD it had specifically raised with her the fact that there were a number of advice agencies, some of which were local to her, whom she could have sought advice from. On being asked why she had not sought advice, she could not provide an explanation. Having considered that the Respondent had been fully able to participate in the CMD and was clearly capable of making a settlement proposal and responding to the Applicant's counter proposal and was more than able to state her position, the Tribunal considered that the Respondent was not at any disadvantage. She had had over 6 weeks to engage a solicitor or an advice agency and had not done so. The Tribunal was confident that the Respondent was more than capable of representing her interests at the hearing in the same manner as she had demonstrated at the CMD and earlier when she had made

a proposal to settle. The hearing accordingly proceeded.

The Applicant's Evidence

23. The Applicant gave brief evidence. She spoke to the Private Residential Tenancy with the Respondent and which had started on 10 January 2019. She was referred to page 6 of the tenancy agreement and to Clause 5 and confirmed the monthly rent was £675, with the first payment due on 10 January 2019. She also confirmed that Clause 5 provided that the rent was to be paid by Standing Order and that Clan Gordon's bank details were detailed.
24. She explained that Clan Gordon had managed the Property until about February 2020 at which stage her husband Eddie took over the management. She had had no involvement with the Respondent except on one occasion when she spoke to the Respondent by phone as she did not believe the Applicant owned the Property. By this stage the Respondent was in arrears of rent and the Applicant wanted to try to resolve matters. The Applicant was referred to the up to date rent statement and confirmed the current arrears of £7855.63.
25. The Respondent was given an opportunity to cross examine the Applicant. She made statements that she had always been under the impression that she was to pay rent when Eddie attended the Property. When directed by the Tribunal to put questions to the Applicant she said she had none.

Mr McKinney's Evidence

26. Edward Christopher McKinney, the Applicant's husband then gave evidence. He confirmed that Clan Gordon had managed the Property until March 2020 and he had assisted the Applicant with her properties for about 13-14 years. He had been the main point of contact with the letting agents. He was referred to an email dated 24 March 2020 from Clan Gordon to the Respondent lodged as Production 1 in the Applicant's Third Inventory of Productions and read it out. It showed that Clan Gordon's involvement was ceasing as of immediate effect, management was being taken over by the Applicant, and that the main point of contact was Mr McKinney, whom they referred to as the Applicant's father and provided the Applicant's address and Mr McKinney's email address and contact phone number. He read out the Respondent's reply on 27 March 2020 that she would need to make arrangements for the rent to be paid to another account. He also read out a further email from the Respondent to Clan Gordon on 31 March 2020 stating she would arrange payments with the Landlord. His evidence was that the Respondent had his contact details and that she would arrange to make payments.
27. Mr McKinney was asked how many times he had met the Respondent. He gave evidence that he had met her on 3 occasions. He had first met her during her old tenancy when he was either arriving or leaving the flat next door and saw her. He asked her if she was the tenant. At that time there were issues with the

rent being paid on time and at one point the Applicant had agreed to reduce the rent by £25 per month.

28. The second occasion was by arrangement with the Respondent. He had received a quote for a shower screen. The quote had then increased. He arranged to attend at the Property and fixed the shower screen. However the contractors still attended at a later date after he fixed it. At about the same time there was an issue with a double glazing unit. The glaziers had tried to call the Respondent on a number of occasions, but she had not answered their calls and did not call back.
29. The third occasion was when he had been attending the flat next door. He thought this was in February 2020. There were issues with rent arrears. He called at the door and spoke with the Respondent who explained her benefits had not been paid. Any other contact he had had with her had been by phone.
30. He was referred to an email dated 22 June 2020 lodged as the Fourth Inventory of Productions and which had also been lodged by the Respondent and gave evidence that this email referred to the Respondent being 4 months in arrears, that no rent had been paid and asking her to contact him with an explanation. He confirmed the Respondent had his email address and phone number. She had called him the next day. She did not deny she was in arrears, but disputed the amount owed. He gave evidence that this had been a recurring theme throughout the tenancy. He had no contact with other members of the Respondent's family about arrears.
31. He spoke to the rent statement and confirmed the current arrears were £7855.63, that the last payment was on 8 April 2020 for £5.13 received from Edinburgh City Council and that the last payment from the Respondent direct had been on 7 February 2020 for £117.23. He denied receiving any payments direct of any kind. He did not deal in cash for any of the tenancies and was aware of his legal responsibilities. He denied having received £3000 from the Respondent and questioned why if the Respondent had paid him £3000 she would not ask for a receipt. No-one else had paid rent on the Respondent's behalf. He had tried to broach the subject of arrears with her in June 2020 and was aware she was on Universal Credit by that stage for which she received an element for rent, but he received no satisfactory response from the Respondent about paying that.
32. Ms Henderson then questioned Mr McKinney. She referred to the email from Clan Gordon of 24 March 2020 which referred to him as the Applicant's father and asked why they had referred to him as that. He stated they had made an error. The Respondent stated that there had been a constant stream of misinformation including the amount of arrears. She put to him she had met him on more than three occasions and that he had to give her 24 hours' notice that he needed access. Mr McKinney stated he disagreed with her and if there had been a problem at the Property he would attend to it.

33. She referred him to the email of 13 January 2020 she had received from Clan Gordon. He explained that he had already referred to that occasion in his evidence when he attended the Property and fixed the shower screen. She stated that nothing was ever done about the window. He reiterated that the glaziers had tried to call her on a number of occasions, she had apparently hung up at some stage and although they called back she had not answered and they were eventually cancelled.
34. She referred him to the email of 22 June 2020 and put it to him that at that stage she was not 4 months in arrears as shown in the rent statement. Mr McKinney conceded that and explained when he had written that email he had been led to believe that was the case. He had apologised to the Respondent at the time and explained the rent statement lodged was the updated and correct statement. The Respondent challenged Mr McKinney and stated it showed a running total of arrears of £7855.63 but did not take account of any of the payments she had made him. She put it to him she had paid him £3000 cash in November 2020. Mr McKinney denied that he had received that amount from her or anyone on her behalf.

The Respondent's Evidence

35. Ms Henderson then gave evidence on her own behalf that she had paid rent direct to Mr McKinney. He was always at the property next door doing change overs as it was an Air BnB. She did not have his bank details and she paid cash when he was at that property. When she had received the current application in January 2021 she realised that she was being accused of not paying the rent. She stopped paying rent then. Her evidence was that she would always take money out of the bank and transfer the money to her grandmother as she herself had a daily limit on the amount of cash she could withdraw. This way she would always have money for rent.
36. In cross examination she was referred to the tenancy agreement and accepted she was the sole tenant and that the monthly rent was £675 and it was her responsibility to make sure the rent was paid. She was referred to Clause 9 which provided that if she paid cash she was entitled to a receipt. She accepted that she had been in receipt of benefits throughout 2020 and that when she moved to Universal Credit that had included housing costs. It was put to her that she had not paid Mr McKinney any cash. This was denied by the Respondent.
37. With reference to the rent statement she was referred to entries on 13 and 20 December 2019 and 7 February 2020 and that these payments had been made by bank transfer and not in cash. She was questioned about the screenshots and asked to explain them. Her response was that they showed her online banking records.
38. She was shown the email of 24 March 2020 from Clan Gordon. It was put to her that this showed she had Mr McKinney's email address and phone number.

It was also put to her that her response in her email of 27 March 2020 showed that she understood rent was to be paid to another account. She accepted that. She also accepted that the email of 31 March 2020 showed she would arrange payments with the Landlord.

39. She was questioned about where it could be seen that the arrangement was that she would pay Mr McKinney in cash as no agreement or emails had been lodged to suggest that had been the arrangement. Her position was that that had been the agreement but she had nothing to show that. Ms Donnelly put to the Respondent that she could have not phoned or emailed Mr McKinney for his bank details. The Respondent simply stated she had not said she could not get him on the phone. Ms Donnelly asked her if it was the Respondent's position that she had paid in cash, what the dates of payment and the amounts paid were. The Respondent stated she did not keep a record of those. When questioned about the screenshots she accepted these could relate to anything. Her position was that she did not have Mr McKinney's bank details, she paid him at the door, but had no record of payments or receipts. She accepted that in terms of the tenancy agreement she could have asked for receipts.
40. The Respondent agreed with Ms Donnelly she was due some of the arrears. When questioned by Ms Donnelly as to how she proposed to calculate what the arrears were if she did not keep records, the Respondent re-iterated her position that she had not paid rent from January – April 2021. However her position was that up to that point she had paid cash to Mr McKinney.
41. Ms Donnelly questioned the Respondent specifically about the £3000 lump sum cash payment she claimed to have paid Mr McKinney. Ms Henderson gave evidence that she had paid him £3000 at the end of November 2020. The Respondent referred to a screenshot dated 23 November 2020 which appeared to show a transfer of £3596. Ms Donnelly challenged that screenshot showed a payment of £3000 to Mr McKinney as there was nothing to show that was a screenshot from her bank or that it related to a cash payment to him. The Respondent accepted she had not lodged her bank statements. She did not want to do so as her finances were not great. Her evidence was that she had got the £3000 cash from the RBS in Stockbridge, Edinburgh and put the money into three separate envelopes. Ms Donnelly put to her that on the one hand the Respondent was organised enough to attend to that matter in that specific manner but didn't think she needed a receipt on passing that money to Mr McKinney. She accepted that she had nothing to show she had paid Mr McKinney cash. She also accepted there was no evidence that she had paid £3000 or any other sums to him.
42. Mr McKinney at that point requested to say something further. The Tribunal allowed him to do so. He explained that he had not been in attendance at the property next door since before the pandemic. There were no short term lets allowed and he had not attended at that property. In response the Respondent claimed the property next door was let out to workmen from a building site. Mr McKinney stated that he and the Applicant had been at home during lockdown and had relied on their daughter for shopping etc and that he had not been the

property next door in over a year. The Respondent's position was that she had stopped paying rent in January 2021 and that it did not make sense she had not asked for receipts.

Findings in Fact

43. The Applicant and the Respondent agreed by way of Private Residential Tenancy Agreement dated 7 January 2019 that the Applicant would lease the Property to the Respondent. In terms of Clause 8 the monthly rent was £675, with the first payment due on 10 January 2019 and on 10th of each month thereafter. Clause 8 also set out the bank details for Clan Gordon and that rent was to be paid by standing order. In terms of Clause 9 the Respondent was entitled to a receipt if she paid rent in cash.
44. The Property was managed by Clan Gordon, including the administration of rent, until 24 March 2020.
45. Edward McKinney is the Applicant's husband. He attended at the Property to deal with minor repairs on occasion. He also regularly attended an Air B'n B property next door to the Property until the start of the COVID pandemic.
46. The Respondent was in receipt of Housing Benefit until about April 2020. Housing Benefit was paid direct to Clan Gordon from Edinburgh City Council. The amount of Housing Benefit varied each month depending on the Respondent's income.
47. The Respondent on occasion paid rent to Clan Gordon. She transferred £107 on 13 December 2019, £100 on 20 December 2019 and £117.23 on 7 February 2020 to Clan Gordon to make up or partially make up any shortfall in rent. The last payment from the Respondent direct was the payment for £117.23 on 7 February 2020.
48. The Respondent was in arrears of £200 on 10 February 2020 until Housing Benefit was paid on 28 February 2020.
49. On 24 March 2020 Clan Gordon emailed the Respondent to advise their involvement in the Property was ceasing as of immediate effect, that the management was being taken over by the Applicant and that the main point of contact was Edward McKinney whom they wrongly referred to as the Applicant's father. Clan Gordon provided the Respondent with the Applicant's address, Mr McKinney's email address and contact phone number.
50. By email of 27 March 2020 to Clan Gordon the Respondent acknowledged she would need to make arrangements for the rent to be paid to another account. The Respondent sent a further email to Clan Gordon on 31 March 2020 stating she would arrange payments with the Landlord.

51. The Respondent had Mr McKinney's email address and contact number. She did not make an arrangement for rent to be paid to another account.
52. The last payment to the rent account was on 8 April 2020 for £5.13 received from Edinburgh City Council.
53. The Respondent incurred arrears of £430 as at 10 April 2020, £1105.63 as at 10 May 2020 and £1780.63 as at 10 June 2020.
54. From June 2020 the Respondent was in receipt of Universal Credit. This included an element for housing allowance. Universal Credit including housing allowance was paid direct to the Respondent from June 2020.
55. On 22 June 2020 Mr McKinney emailed the Respondent and stated she was 4 months in arrears, that no rent had been paid and asking her to contact him with an explanation. The Respondent called Mr McKinney the following day and denied she was in 4 months arrears. The Respondent was in arrears of £1780.63 on 22 June 2020 and had not paid rent since 8 April 2020 when Housing Benefit was received from Edinburgh City Council. The Respondent has paid no rent since then.
56. Arrears have accrued and continue to accrue at £675 per month since 8 April 2020. Arrears to 10 March 2021 are £7855.63.

Reasons for Decision

57. The Tribunal considered the issues set out in the application together with the documents lodged by both parties and the evidence led by both parties. The Applicant produced evidence of persistent non-payment of rent from April 2020 with reference to the tenancy agreement and the rent statements lodged. The Tribunal preferred the evidence of the Applicant and Mr McKinney that the Respondent had not paid cash towards rent. The Applicant's evidence was uncontentious simply speaking to the tenancy agreement and rent statement. Conversely, Mr McKinney's evidence struck at the heart of the dispute as to whether as claimed by the Respondent he had accepted cash payments towards rent from the Respondent including a lump sum payment of £3000.
58. Mr McKinney was a straightforward witness. His evidence was clear and consistent throughout, namely that he had not accepted any cash from the Respondent. Under cross examination from the Respondent he conceded he had been wrong by his reference to her being 4 months in arrears. He was magnanimous, but firm in his answers.

59. The Respondent had originally stated that she could hand the keys back to the Applicant at the end of the week if the Applicant was prepared to agree the arrears stood at £2700. Her attitude immediately changed when Ms Donnelly advised the Tribunal that the Applicant would not settle the case by acceptance of arrears of £2700 only. The Respondent became belligerent and stated she would remain in the Property until June 2021 when the Notice to Leave expired and would continue to incur arrears of £675 per month. This did not impress the Tribunal. It was not clear to the Tribunal why if she was being honest and reasonable, she would take such a stance. The Tribunal formed the view that the Respondent had not taken kindly to the Applicant's decision to proceed with the hearing and had therefore chosen to take a more obstructive approach to her position.
60. Despite the Respondent's position that she had paid cash to Mr McKinney she candidly admitted in cross examination that she had no evidence to show she had done so and that the screen shots she had lodged could have been for anything. The Tribunal accepted the Respondent's evidence in this regard.
61. The Respondent had stated at the CMD she had bank statements which would support her position and yet she had not lodged these despite a Notice of Direction from the Tribunal for her to do so. She had not given any evidence to the Tribunal as to when these cash payments were made or how much they were for other than stating she had paid Mr McKinney a lump sum payment of £3000 at the end of November 2020. Whilst the Tribunal noted that there was a transaction for £3596 on 23 November 2020, the Respondent under cross examination admitted that could have been for anything. The Tribunal also noted that was a very specific amount, an amount that exceeded the alleged £3000 paid to Mr McKinney by £596. The Tribunal found the screen shots lodged by the Respondent in isolation, without reference to bank statements linking them to the Respondent's bank account which could also have been lodged by the Respondent, did not show that cash sums had been withdrawn by the Respondent and could have been for anything.
62. The Tribunal formed the opinion that the Respondent was very aware of her obligation to pay rent, when rent was due and how much she was in arrears at any given time. She struck the Tribunal as being very astute. She appeared forceful and determined and successfully challenged Mr McKinney in cross examination that on 22 June 2020 she was allegedly in 4 months arrears when she was not. However, the Tribunal found her evidence to be inconsistent and unreliable in places. On the one hand she invited the Tribunal to accept she had made cash payments to Mr McKinney, but on the other hand she had not kept records of when these were made or how much they were for. The Tribunal also noted that whilst she was aware she could have asked for receipts she did not do so. That position struck the Tribunal as

being at odds with her awareness of what her arrears were on 22 June 2020 and her ability in re-enforcing her position with Mr McKinney, but was then inviting the Tribunal to accept she had made cash payments, including one of £3000 and that she had naively not asked for receipts. That struck the Tribunal as being a puzzling inconsistent approach.

63. Further on the one hand she stated she did not want to lodge her bank statements as her finances were not in the best of order, but on the other hand was inviting the Tribunal to accept that she had taken over £3000 in a lump sum from her account to pay Mr McKinney cash. That is a large sum of money, particularly for someone on Universal Credit and who on the Respondent's own evidence had made other cash payments to Mr McKinney before then. This left the Tribunal questioning the veracity of her evidence.

64. The Tribunal also noted that the payment of rent had stopped when the Respondent had started to receive Universal Credit and was paid housing costs direct. She had ample opportunity to make arrangements with Mr McKinney to pay rent into another account after Clan Gordon stopped managing the property from 24 March 2020 and when he emailed her on 22 June 2020. The email correspondence from the Respondent showed that she was aware she should do so. The evidence showed that she had not arranged with Mr McKinney for that to be done. In all the circumstances the Tribunal was left in real doubt about the Respondent's credibility and reliability.

65. Accordingly, in relation to the material aspects of contention in this case, namely the amount of arrears and whether cash payments had been made, the Tribunal preferred the evidence of the Applicant and Mr McKinney where it was at odds with the Respondent's evidence. The Tribunal found that the arrears to 10 March 2021 were £7855.63.

Decision

66. The Tribunal granted the application and made an order for payment. The decision of the Tribunal was unanimous

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.

Shirley Evans

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14 April 2021

Legal Chair

Date