



**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 (Act)**

**Chamber Ref: FTS/HPC/CV/20/0392**

**Re: Property at 7 Longstone Road, Cranhill, Glasgow, G33 3JT (“the Property”)**

**Parties:**

**Mrs Roseann Gear, 151 Abbeyhill Street, Carntyne, Glasgow, G32 6LJ (“the Applicant”)**

**Ms Patricia McCormick, 7 Longstone Road, Cranhill, Glasgow, G33 3JT (“the Respondent”)**

**Tribunal Members:**

**Alan Strain (Legal Member) and Janine Green (Ordinary Member)**

**Decision (in absence of the Applicant)**

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

**Background**

This is an application under section 16 of the Act and Rule 70 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017(Regulations)*. The Applicant seeks payment of alleged rent arrears.

The Tribunal had regard to the following documents in advance of the Hearing:

1. Application received 7 February 2020;
2. Tenancy Agreement commencing 11 September 2009;
3. Schedule of Rent Arrears lodged with the application;
4. Email from Glasgow City Council dated 19 March 2020 setting out Housing Benefit payments made in respect of the Property;
5. Written Representations from both Parties with Bank Statements and text messages;
6. Schedule of Rent Arrears from the Applicant as at 28 June 2020;

7. Email of 23 September 2020 to the Applicant's Solicitor enclosing Hearing Notification.

## Hearing

The Respondent, her Partner and the Respondent's solicitor participated. The Applicant did not dial in and was not represented. Her solicitor had emailed the Tribunal on 26 October 2020 and advised that she was no longer representing the Applicant'

The Tribunal delayed the start of the Hearing to see if the Applicant would dial-in. She did not.

The Tribunal determined to proceed in absence of the Applicant as she had notice of the Hearing and had not dialled in. Her Solicitor had been served with the Hearing Notification on 23 September 2020.

The Tribunal heard evidence from the Respondent and her Partner. Their position was that whilst the tenancy agreement specified that the rent was £480 per month it had actually been agreed verbally with the Applicant's husband (3 or 4 years after the tenancy commenced) that the rent would be £440.

The Respondent paid the rent in cash and had not obtained receipts. The Respondent referred to Bank Statements which showed her withdrawing £440 per month which she then paid to the Applicant. In particular, these confirmed her withdrawing £440 and paying rent in August and September 2019 which the Applicant appeared to deny receiving.

The text messages on 26 April 2019 make reference to paying a balance of £100 due in rent with the next rental payment in the sum of £540. This confirmed that the rent was £440 per month.

Accordingly, there were no arrears.

Since November 2019 Housing Benefit had been paid directly to the Applicant by Glasgow City Council and continued to be paid. This confirmed there were no rental arrears since then.

The Tribunal then heard submissions from the Respondent's solicitor.

Having considered the oral and documentary evidence before it the Tribunal made the following findings in fact:

- i. The Parties entered into the Tenancy Agreement commencing 1 September 2009;
- ii. The monthly rent was specified as £480;
- iii. 3-4 years into the tenancy the Parties agreed the monthly rent would be varied to £440;
- iv. The Respondent paid the rent in cash to the Applicant up until Housing Benefit started to pay rent directly to the Applicant on 16 November 2019;

- v. The Respondent paid the rent due for August and September 2019 in cash to the Applicant;
- vi. Since 16 November 2019 all rental payments have been made by Housing Benefit directly to the Applicant at the 4-weekly rate of £443.08;
- vii. The Applicant by her acceptance of the payments from Housing Benefit on a 4 weekly basis agreed to rent being paid on this basis;
- viii. The rent was not in arrears.

The Tribunal accepted the uncontested evidence of the Respondent and her Partner that the rent had been varied to £440 per month, that payments had been made in cash directly to the Applicant and that there were no rental arrears. The documentary evidence supported their evidence. Especially the text exchange on 26 April 2019 and the email of 19 March 2020 from Glasgow City Council confirming the payments made to the Applicant.

The Tribunal accordingly refused to grant the order for payment sought.

### **Outcome**

- **Application 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.**

**A. S**

**27 October 2020**

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**Legal Member/Chair**

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**Date**