



**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 (“the 2014 Act”) and Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”)**

**Chamber Ref: FTS/HPC/CV/18/2263**

**Re: Property at 101 Auldhouse Road, Glasgow, G43 1XB  
 (“the Property”)**

**Parties:**

**Mr Andrew Millar and Mrs Gail Ross, c/o Igloo (Scotland) Ltd, 2 Gateside Street, Hamilton, ML3 7JG  
 (“the Applicants”)**

**TCH Law, Solicitors, 29 Brandon Street, Hamilton, ML3 6DA  
 (“the Applicants’ Representative”)**

**Ms Mundanna Ahmed, 101 Auldhouse Road, Glasgow, G43 1XB  
 (“the Respondent”)**

**Tribunal Members:**

**Susanne L M Tanner Q.C. (Legal Member)  
 Gerard Darroch (Ordinary member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that the Respondent should pay to the Applicant the sum of SEVEN THOUSAND SIX HUNDRED AND FIFTY POUNDS (£7650.00) STERLING; together with interest at the judicial rate of eight per cent per year (8%) in terms of Rule 41A of the 2017 Rules; and made an Order for Payment in respect of the said sums.**

## 1. Procedural background

- 1.1. The Applicant made an Application to the tribunal on 27 August 2018 in terms of Section 16 of the 2014 Act and Rule 70 of the 2017 Rules, seeking an order for payment against the Respondent in the sum of £3400 in respect of rent arrears (or the arrears at the date of granting the order).
- 1.2. The Application and documentation submitted with it was considered by the legal member of the tribunal with delegated powers of the Chamber President.
- 1.3. On 3 October 2018, the Application was accepted for determination by the tribunal.
- 1.4. Case Management Discussions ("CMDs") were held on 20 January 2018, 8 January 2019 and 29 January 2019. Reference is made to the terms of the Notes on the Case Management Discussions.
- 1.5. Directions were issued to the parties on 20 November 2018.
- 1.6. At the CMD on 29 January 2019, parties were notified that a hearing would be fixed as there were disputed matters of fact in relation to both the level of rent arrears and whether the rent arrears were lawfully due by the Respondent to the Applicants.
- 1.7. On 1 February 2019, parties were notified of the date, time and place of a hearing.
- 1.8. On 13 February 2019, the Applicant's Representative submitted Written Representations, a List of Witnesses for the Applicant and an Inventory of Productions for the Applicant.
- 1.9. The Respondent did not submit any written representations or documents in advance of the hearing.
- 1.10. On 14 February 2019 the Respondent's Representative contacted the tribunal to state that she had withdrawn from acting for the Respondent.
- 1.11. On 19 February 2019, the tribunal's administration received confirmation from the Respondent's Representative that she had informed her former client, prior to withdrawing, of the date, time and place of the hearing.

## **2. Hearing – 20 February 2019 at 1000h at Glasgow Tribunals Centre, Room 111**

2.1. Caitlyn McNiven, TCH Solicitors, attended on behalf Applicant Representative.

2.2. Donna-Marie Stewart, Igloo Estates was present as a witness for the Applicant (and listed as Witness number 1 on the Applicant's witness list dated 13 February 2019).

2.3. The Respondent did not attend the hearing despite her Representative having been notified of the same. The tribunal decided to proceed in her absence in terms of Rules 29 of the 2017 Rules as it was satisfied that the requirements of Rule 24(1) regarding the giving of notice of a hearing had been duly complied with. The tribunal proceeded with the Application upon the representations of the Applicants' Representative and all the material before it.

2.4. The Applicant's Representative withdrew the related eviction application EV/18/2262 in terms of Rule 15 of the 2017 Rules.

2.5. The tribunal confirmed that the amount sought by the Applicants was as stated at the CMD on 29 January 2019, £7650.00. The Respondent's former Representative was present at the time that the increased sum was notified.

2.6. At the hearing on 20 February 2019, Ms McNiven formally amended the Application to seek £7650.00 at the hearing, with the consent of the tribunal.

2.7. Ms McNiven also moved for expenses in terms of Rule 40 and interest on the principal sum from the date of the decision in terms of Rule 41A of the 2017 Rules.

### **2.8. Principal sum**

2.8.1. In relation to the principal sum Ms McNiven pointed to the Short Assured Tenancy Agreement dated 1 June 2016 (App Doc number 1). Since 30 November 2016 it has continued on a monthly basis. The rent is £850 per calendar month.

- 2.8.2. On or around 1 February 2019 the tenant handed her keys back in to TCH Solicitors and the Letting Agent met the Landlords at the Property to carry out an inspection on 4 February.
- 2.8.3. Ms McNiven referred to the Rent statement (App Doc number 2). Ms Stewart said that the rentals are shown on the left hand side of the page. The right is for the landlord. Everything was paid by the Respondent until 12 April 2018. After the Respondent received the Notice to Quit around 22 to 24 April 2018, she stopped paying. Rent was due on 1<sup>st</sup> of each month. She paid on 12<sup>th</sup> April. She did not pay on 1 May. Rent for months 24 to 32 is unpaid. The rent arrears total £7650.00. In answer to a question about the figure of “-£76.56” shown below the arrears she stated that that related to a cost to the Landlord for a Homeheat repair.
- 2.8.4. Ms Stewart was not sure of the Respondent's circumstances or whether she received Housing Benefit. The payments she did make came from her. The Letting Agent never received any correspondence from the local authority in relation to housing benefit from the Respondent. Ms Stewart stated that the Respondent has never said anything in her dealings with the Letting Agent from April onwards in relation to housing benefit.
- 2.8.5. Ms Stewart said that the Agents were trying to speak to the Respondent about her rent arrears. The Respondent did say that repairs were an issue. The Letting Agent told her that any repairs she reported would be fixed. However, she wanted the carpets replaced. The Letting Agent told her that was up to the Landlord. It was not treated as a repairs issue. The only other matter she mentioned was that her mirrored door was a bit stiff.
- 2.8.6. The Landlord is intending to sell the Property. That was the reason for serving the NTQ. The Landlord has a significant amount of work to do because of the condition it has been left in by the Respondent. Some photographs were taken at the end of 2018 and others taken on 3 and 4 February 2019, and these are App Docs 4 and 5.
- 2.8.7. The tribunal was satisfied on the basis of the terms of the Short Assured Tenancy, the rent statement and the evidence and submissions on behalf of the Applicants that the principal sum of £7650.00 was due by the Respondent to the Applicants.

## **2.9. Interest**

2.9.1. The Applicant's Representative made an application for interest on the principal sum from the date of today's decision at the judicial rate of eight per cent (8%), in terms of Rule 41A, which came into force today. There were no provisions for an interest rate in the Short Assured Tenancy Agreement.

2.9.2. The tribunal was satisfied that interest should be awarded from the date of the Decision the judicial rate of eight per cent (8%) per year.

## **2.10. Expenses**

2.11. The Applicant's Representative made an Application for expenses in terms of Rule 40, due to what she said was the Respondent's unreasonable behaviour in the conduct of the case which she said had put the Applicants to unnecessary expense.

2.12. Ms McNiven made the following submissions in support of her application. She referred to the fact that there have been three case management discussions and today's hearing, which she said did not require to go ahead. The Respondent has moved out. The Respondent has not put forward any defence to the arrears, despite Directions to do so. At the last CMD it was admitted by the Respondent that arrears were due. The Applicants have gone to the unnecessary expense of the last Case Management Discussion and also today's hearing at which the Respondent has not appeared. None of the Directions issued by the tribunal have been complied with. She stated that the unnecessary expenses incurred have been the appearance of solicitors at the CMD on 29 January 2019 and the hearing on 20 February 2019.

2.13. The ordinary member asked about the statement at the CMD that the Respondent wished to dispute the level arrears and raise arrears issues. Ms McNiven accepted that there were disputed matters of fact but repeated the fact that these have not been specified by the Respondent. Ms McNiven did not refer to any legal authorities to support her submission that the behaviour complained of amounted to unreasonable behaviour for the purposes of Rule 40.

2.14. The tribunal considered the procedural history. The tribunal noted that CMDs were continued in relation to this Application and the related eviction Application (which was not withdrawn until today's hearing) to allow or order both parties to do certain things. The Applicants required to produce a

number of essential documents, and were Directed to do so, which they did later produce in response to a Direction, although these were late, which necessitated a further CMD. The Respondent instructed a solicitor which the tribunal did not consider to be unreasonable. The solicitor appeared at the CMD on 29 January 2019 and stated that there were disputed matters of fact and that evidence was being obtained in relation to the repairs issue. The hearing was fixed because there were disputed matters of fact. The tribunal did not think that the withdrawal of the solicitor on 14 February 2019, on the basis of being unable to maintain contact with the Respondent, amounts to unreasonable behaviour on the part of the Respondent as required in terms of Rule 40.

2.15. The tribunal took the view that the Respondent's conduct of the case could not be said to amount to unreasonable behaviour of the type required in terms of Rule 40.

### **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.**

**Ms Susanne Tanner**

**20 February 2019**

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**Susanne L M Tanner Q.C.  
Legal Member/Chair**