



**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/19/2529**

**Re : Property at 28 Springfield Gardens, Parkhead, Glasgow G31 4HW (“the  
 Property”)**

**The Parties:-**

- (1) Ayodeji Babatope, 47 Oakfield Road, Altrincham, Greater Manchester  
 WA15 8ER (“the First Applicant”); and**
- (2) Tolulope Babatope, 47 Oakfield Road, Altrincham, Greater Manchester  
 WA15 8ER (“the Second Applicant”)**

represented by Fineholm Lettings, 114 Union Street, Glasgow G1 3QQ

**Ms Daneka Hardie, residing or formerly residing at 28 Springfield Gardens,  
 Parkhead, Glasgow G31 4HW (“the Respondent”)**

represented by Laura Simpson, solicitor, Govan Law Centre, Samaritan House, 79  
 Coplaw Street, Glasgow G42 7JG

**The Tribunal comprised:-**

Mr David Bartos                      - Legal member and Chairperson

**DECISION**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
 Tribunal”) determined that the Respondent shall pay to the Applicants the sum  
 of THREE THOUSAND SIX HUNDRED AND FIFTY-FOUR POUNDS AND  
 THIRTY-SIX PENCE (£3,654.36) STERLING.**

Background

1. In June 2014 the Respondent entered into a tenancy of the Property with the First Applicant as landlord and the Respondent as tenant. The Second Applicant consented to the tenancy. The Applicants seek an order for payment of rent by the Respondent. The rent payment sought goes beyond the termination of the tenancy on 12 April 2019 after which time it would in the form of violent profits.
2. On 14 October 2019 the Tribunal had a case management discussion ("CMD") at 14.00 hrs at the Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The Applicants' representative Mrs Ellen Hamilton, office manager of Fineholm Lettings appeared accompanied by their lease administrator Miss Pamela Davren. There was no appearance by or on behalf of the Respondent. The Tribunal noted that Notice of the CMD at today's date had been given to the Respondent in a letter from the Tribunal dated 6 September 2019 which had been served on her by sheriff officer on 9 September 2019 as per his certificate of citation. The Respondent had consulted a solicitor at the Govan Law Centre who confirmed by e-mail that while she was representing the Respondent she would not be attending the CMD. The Tribunal proceeded with the CMD. It took the view that in all the circumstances it was not unfair to the Respondent to proceed with the CMD and that it would be unfair to the Applicants for there to be delay.
3. *Facts Not in Dispute Between the Parties*

Having considered all the evidence, the Tribunal found the following facts to be established:-

- (a) On 13 June 2014 the First Applicant granted a written short assured tenancy of the Property to the Respondent ("the First Lease"). The Lease was for 6 months commencing on 13 June 2014 and thereafter on a two-monthly basis.
- (b) The Lease provided for the payment by the Respondent to the Applicant of rent of £ 675 per month payable in advance on the first day of each month. The Lease continued in force until 13 December 2014.
- (c) On 15 June 2016 the Applicants became equal co-owners of the Property.
- (d) On 13 December 2014 the First Applicant granted a fresh written short assured tenancy of the Property to the Respondent ("the Second Lease"). The Second Lease superseded the First Lease. The Second Lease was for one year on 13 December 2014, ending on 12 December 2015 and thereafter on a two-monthly basis. The Second Lease was granted with the consent of the Second Applicant.

- (e) The Second Lease provided for the payment by the Respondent to the Applicant of rent of £ 698.63 per month payable in advance on the first day of each month. From 1 January 2017 the rent was put up to £723.08 per month under clause 3 of the Lease. The Lease continued in force until 12 April 2019.
- (f) The total amount of rent (including violent profits after the termination of the Lease on 12 April 2019) due and unpaid up to 31 August 2019 is £3,654.36 as per the Applicant's Tenancy Transaction Report dated 12 August 2019.
- (g) On 12 August 2019 the Applicants applied to the Tribunal for an order for payment. The sum of £3,654.36 remains due and unpaid.
- (h) The Respondent has made some payments after 12 August 2019 but these relate to a period of occupation after 12 August 2019.

### ***Submissions***

- 4. At the CMD the Applicants' representative confirmed that the Second Lease was as lodged by her and that no further payments had been made since 12 August 2019 in respect of the amount outstanding at that time. She acknowledged the point made by the Respondent's solicitor in her e-mail to the Tribunal that some payments had been made since 12 August, but these had been made in respect of the occupation after August 2019 for which payment was still due but not claimed under this particular application.
- 5. She noted that further sums were due not covered by the Tenancy Transaction Report lodged with the Tribunal but preferred to reserve the right to raise a fresh application for those sums rather than to seek amendment of the application to include those further sums.
- 6. The Tribunal raised with the Applicants' representative that some of the payments made by the Respondent in the past had been allocated to claims for late payment fees which might not be due under the Consumer Rights Act as unfair provisions (e.g. £25 being due in respect of possibly one day's delay). Mrs Hamilton indicated, very fairly, that the Applicants were prepared to reduce their claim by the £175 of payments from the Respondent which they had allocated to meeting late payment fees.
- 7. Mrs Hamilton submitted that no defence had been stated and that the Tribunal should grant the order sought under deduction of £175 without continuation to a hearing.

### ***Reasons***

- 8. The Tribunal considered the application, the oral submissions and the documentary evidence submitted by the Applicants. It found that it was able to make sufficient findings in fact and that to do so was not contrary to the

interests of the parties. It was therefore able to decide the case at the CMD without a hearing. It could see no benefit to be gained from a further hearing which would cause delay.

9. The Tribunal was satisfied that no doubt had been cast on Mrs Hamilton's submissions or the documentary evidence. It accepted the submissions made by Mrs Hamilton. On that basis the Tribunal made the findings in fact set out above.
10. The Tribunal accepted that there had been breaches by the Respondent of her duty to pay the rent under the Lease and violent profits after the termination of the Lease and that the total amount sought at the CMD remained unpaid. In the circumstances the Tribunal awarded the Applicants the sum sought by them.
11. The Tribunal noted in passing that while the default position after the termination of a lease was that the former tenant in occupation was liable to pay violent profits at the same rate as the rent at the ish of the lease, the non-contractual liability to pay violent profits arose in respect of actual occupation rather than in advance for a period which was yet to occur.

### ***Outcome***

12. The First-tier Tribunal for Scotland (Housing and Property Chamber) made the decision stated above.

### ***Right of Appeal***

13. In terms of section 46 of the Tribunals (Scotland) Act 2014 a party aggrieved by the decision of the Tribunal may seek to 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.

**NOTE: This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to tribunal members in relation to any future proceedings on unresolved issues.**

**Legal Member**

**Date**

---