



**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/19/2724

**Re: Property at 86 Rosebank Crescent, Lockerbie, Dumfriesshire, DG11 2HJ
("the Property")**

Parties:

**William McEwan Scott, Room 8, Rowan Suite, Westfield Care Home, Dumfries
Road, Lockerbie, DG11 2EF ("the Applicant")**

**Mr Remigiusz Wiski, 6 Broomhouse Court, Lockerbie, Dumfriesshire, DG11
2LY ("the Respondent")**

Tribunal Members:

Neil Kinnear (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that**

Background

This is an application for a payment order dated 29th August 2019 and brought in terms of Rule 70 (Application for civil proceedings in relation to an assured tenancy under the 1988 Act) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant sought in the application payment of arrears in rental payments of £7,922.00 in relation to the Property from the Respondent, together with costs of £511.00. The Applicant provided with the application copies of the short assured tenancy agreement and rent arrears statement.

The short assured tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 26th September 2019, and the Tribunal was provided with the execution of service.

Case Management Discussion

A Case Management Discussion was held on 30th October 2019 at Lochvale House, Georgetown Road, Dumfries. The Applicant did not appear, but was represented by his daughter, Mrs Cole. The Respondent did not appear, nor was he represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal had e-mailed Mrs Cole a week ahead of the Case Management Discussion with certain queries relating to the application, and the parties to it. As a result, Mrs Cole attended with further information in that regard.

The Tribunal had noted that the application was originally brought against the Respondent and a further Respondent, Miss Suzanna Janus, who resides with the Respondent. Miss Janus is not, however, a party to the lease agreement.

Mrs Cole accepted that this was the position, and explained that due to her unfamiliarity with legal procedure she thought she needed to bring the application against both Miss Janus and the Respondent as they lived together at the Property.

She confirmed after the Tribunal explained that applications can only be brought against someone who is a party to the agreement relied upon, that she wished Miss Janus removed as a Respondent in this application.

The Tribunal also noted that Mrs Cole had correctly listed herself as representative in this application, on the basis that she holds power of attorney for the landlord and owner of the Property, William Scott, who is her father. Mrs Cole had brought a copy of the power of attorney authorising her to bring an application such as this on her father's behalf, and the Tribunal allowed her to lodge that.

However, Mrs Cole had listed the applicant as herself under power of attorney for her father. That is not correct, as the landlord in terms of the lease agreement, and indeed the owner of the Property, is her father, William Scott. Indeed, the lease agreement provides a landlord registration number, which is also for her father, William Scott.

Mrs Cole accepted after the Tribunal explained that applications should be brought by the person who is a party to the agreement from which their right to claim arises, that her father, William Scott, is the proper applicant here and not herself. She had thought as she held power of attorney that she was the proper applicant, but having now understood the position, asked that her father be substituted as Applicant.

Mrs Cole confirmed that her father's address is Room 8, Rowan Suite, Westfield Care Home, Dumfries Road, Lockerbie, DG11 2EF.

Mrs Cole also confirmed that the title to the Property on the Land Register was in the names of her father, William Scott and her late mother, Mary Jane Rowan Scott, who had died in 2016. The title was in joint names with a destination in favour of the survivor, so her father was now sole proprietor.

Mrs Cole confirmed that the Respondent had been served with notice to quit the Property on 1st July 2019, but that he had failed to do so, and remained there until finally leaving on 24th July 2019, when he returned the keys to her.

The Tribunal noted that the rent arrears statement charged rent for the whole of the month of July 2019, and queried whether the figure should be reduced as arrears would appear only to accrue until 24th July when the Respondent quit the Property.

Mrs Cole agreed that this should be so, and confirmed with the Tribunal that the reduced figure of £7,818.44 was the correct figure for rent arrears calculated until 24th July 2019.

Finally, Mrs Cole indicated that she had no receipts, estimates or any other evidence in relation to the costs which she sought, which mainly relate to the likely cost of replacement of various items.

The Tribunal considered that it would need to see some evidence to support the sums claimed. Mrs Cole asked that the Tribunal grant an order today solely in respect of the rent arrears sought, and indicated that she would bring a further application in due course in respect of the costs she sought once she had obtained proper costings for those.

Statement of Reasons

Section 16 of the *Housing (Scotland) Act 2014* provides as follows:

"16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3) Part 1 of schedule 1 makes minor and consequential amendments."

Accordingly, the Tribunal now has jurisdiction in relation to claims by a landlord (such as the Applicant) for payment of unpaid rental against a tenant (such as the Respondent) under a short assured tenancy such as this.

The Tribunal considered the terms of the short assured tenancy agreement, the copy rent arrears statement provided, and Mrs Cole's submissions, and was satisfied that this disclosed an outstanding balance of rent arrears in the sum of £7,818.44. Accordingly, the Tribunal shall make an order for payment of that sum.

The Tribunal will also make orders in terms of Rule 32 (Addition, substitution and removal of parties) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, substituting William McEwan Scott, Room 8, Rowan Suite, Westfield Care Home, Dumfries Road, Lockerbie, DG11 2EF as Applicant, and removing Miss Suzanna Janus as a party to the application.

Decision

In these circumstances, the Tribunal will make an order for payment by the Respondent to the Applicant of the sum of £7,818.44.

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.

Neil Kinnear

Legal Member/Chair

30/10/19

Date