



**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/19/3008**

**Re: Property at 28 Bavelaw Road, Balerno, Edinburgh, EH14 7AD ("the  
Property")**

**Parties:**

**Mr John Whyte, 66/5 Ogilvie Terrace, Edinburgh, EH11 1NP ("the Applicant")**

**Miss Liane Newton, 28 Bavelaw Road, Balerno, Edinburgh, EH14 7AD ("the  
Respondent")**

**Tribunal Members:**

**Fiona Watson (Legal Member) and Ann Moore (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the  
Tribunal") determined that an order is granted against the Respondent(s) for  
payment of the undernoted sum to the Applicant(s):**

**Sum of THIRTY EIGHT THOUSAND, FOUR HUNDRED AND TWELVE POUNDS  
AND THIRTY PENCE (£38,412.30) STERLING**

- **Background**

1. An application dated 24 September 2019 was submitted to the Tribunal under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules"), seeking a payment order against the Respondent in relation to rent arrears accrued under a short assured tenancy agreement.

- **The Case Management Discussion**

1. A Case Management Discussion ("CMD") took place on 3 December 2019. Both parties were in attendance. The Respondent indicated that she wished



to defend the application on the basis that the arrears that the application founded upon were not due. Accordingly, a Hearing was fixed for 30 January 2020 for evidence to be led.

- The Hearing
2. The Applicant was personally present. The Respondent was not present. On 29 January 2020 at 21.25 an email was sent by the Respondent to the Tribunal administration which stated that her daughter had had surgery that day and there were some complications. She stated *"I'm sorry but I can not attend the tribunal dated 30/01/2020 because of this. I was expecting to attend so I am sorry for the very late notice. We have vacated the property at 28 Bavelaw Road Balerno EH147AD as promised at the last meeting. Keys handed back to Brian Paul."*
  3. A separate application submitted under Rule 65 of the Rules was heard at the same time in relation to an application for a repossession order on the basis of the rent arrears, under case reference FTS/HPC/EV/19/3007.
  4. The Applicant confirmed that the keys had not been handed back to Brian Paul. Whilst he didn't think the Respondent was now living in the property, no keys had been returned. He wished the Hearing to proceed in her absence.
  5. The Tribunal noted that the Respondent's email did not make any request for a postponement of the Hearing. It also noted that Ms Newton had not lodged any documentation as directed within 7 days of the CMD, to demonstrate her position that there had been repairing issues in the property and that she had withheld rent on that basis. Taking into account the Tribunal's overriding principles, it decided to proceed with the Hearing in the Respondent's absence.
  6. The Applicant confirmed that no further rent had been paid. He sought the Order for payment to be granted., The rent statement lodged with the application up to 1 September 2019 showed a balance of £42,512.27. The Tribunal noted that the statement commenced June 2013. Accordingly it appeared to the Tribunal that the arrears accrued between 1 June 2013 and 30 September 2014 would have prescribed in terms of the Prescription and Limitation (Scotland) Act 1973, in that said portion of the debt was more than 5 years old. The Applicant had no submissions to make on this point.
  7. The Applicant submitted that he was now behind in his own rent in his sheltered housing as he was receiving no rent from the Respondent. He was unable to claim Housing Benefit due to him owning the property in question. His friend was assisting him with payment of his rent meantime. The Applicant disputed that the list of repairing issues lodged by the Respondent in advance of the CMD was true. He confirmed that he had instructed a joiner to replace the doors, and that he had an electrician attend at the property to carry out an inspection of a light fitting which had been reported as faulty. No further issues were reported to him. The Respondent had refused to allow the



electrician access to the cupboard which contained the electricity meter so he was unable to complete the work. He did not believe that she was withholding her rent, but instead just simply was not paying. The Respondent had previously been in receipt of Housing Benefit but this had stopped due to a change in her circumstances. He had never agreed to reduce the monthly rental due, to accommodate any lesser payment being paid by Housing Benefit,

8. The Tribunal heard evidence from Brian Paul who confirmed that he had not had any contact with the Respondent, nor had she returned keys to him.

- Findings in Fact

2. The Tribunal made the following findings in fact:

- (a) The parties entered into a Short Assured Tenancy Agreement ("the Agreement") which commenced 1 June 2013;
- (b) In terms of Clause 4.1 of the Agreement, the Respondent was obliged to pay a monthly rent of £850 to the Applicant;
- (c) The Respondent had failed to make payment of rent as fell lawfully due, and had accrued arrears amounting to £42,512.27.

- Reasons for Decision

3. The Tribunal was satisfied that the Applicant was entitled to the sum 38,412.30. This was the total arrears of £42,515.27 less the sum of £4,099.97 being the arrears accrued between 1 June 2013 and 30 September 2014 would have prescribed in terms of the Prescription and Limitation (Scotland) Act 1973, in that said portion of the debt was more than 5 years old. The Respondent was obliged to make payment of rent in the sum of £850 per month under Clause 4.1 of the Agreement and had failed to do so.

4. Accordingly, the Applicant was entitled to the Order for Payment as sought.

- Decision

5. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent(s) for payment of the undernoted sum to the Applicant(s):

Sum of THIRTY EIGHT THOUSAND, FOUR HUNDRED AND TWELVE POUNDS AND THIRTY PENCE (£38,412.30) STERLING

## **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.

  
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Legal Member/Chair

30/01/2020  
\_\_\_\_\_  
Date