

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 1988**

**Chamber Ref: FTS/HPC/CV/18/1908**

**Re: Property at 62 Springbells Road, Annan, Dumfriesshire, DG12 6LG (“the Property”)**

**Parties:**

**Mr Allan Johnstone, Mrs Tracey Johnstone, Mill Hill Farm, Gretna, Dumfriesshire, DG16 5HZ (“the Applicants”)**

**Mr Andrzej Kosciuk, Mrs Natalie Jesiolowska, Clarence Cottage, Toppinghead, Kirkpatrick Fleming, Lockerbie, DG11 3BE (“the Respondents”)**

**Tribunal Members:**

**Melanie Barbour (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

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

Background

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 70 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for payment of the sum of £12,800 in relation to rent arrears due by the Respondents.
2. The application contained:-
  - a copy spreadsheet of payments made and not made;
  - text messages between the landlord and the tenants; and
  - Correspondence between agents regarding the debt.

3. The Applicants' representative, Mr Hann, from Messrs Hann & Co, attended with the Applicants. The Respondents' agent Ms Raymond, from Messrs JHS Law attended with the Respondents.
4. This was the second day of hearing this application, the first day having commenced on 4 March 2019 but being adjourned before evidence was led; reference is made to the Hearing Note of 4 March 2019. There had been two earlier procedural hearings in this application namely, on 19 November 2018 and 15 January 2019 with accompanying notes produced at those discussions.
5. Prior to the hearing commencing on 4 March 2019 parties lodged documents in support of their case.
6. The Applicants' final documents list being lodged by email on 25 February 2019, the List of Documents numbered 1-78. Reference is made to the Applicants' List of Documents and accompanying documents attached thereto.
7. The Respondents' first List of Documents with accompanying documents were submitted by letter from JHS Law on 7 December 2018; with a second set of documents being submitted by letter dated 8 February 2019.
8. At the hearing on 4 March 2019, parties agreed that during the period when rent was claimed to be due, from March 2014 – July 2016, housing benefit totalling £11,078.45 had been paid to the Respondents for the Property; and that there was alleged outstanding rent due which was not covered by any housing benefit payments totalling £1,371.55.
9. A preliminary point had been raised by the Tribunal on 4 March 2019 namely as Housing Benefit had been paid to the Respondents then did that Housing Benefit not cover the rent during the period it have been paid; and payments for work done for the Applicants by the Respondents during that period could not therefore be in lieu of rent. Reference was made to Applicants' Productions 67 and 68 regarding the housing benefit payments. The Tribunal questioned whether the claim for work done was in fact a payment claim within the jurisdiction of the sheriff court. The Respondents thereafter moved the Tribunal to postpone the application to allow separate proceedings to be raised in the sheriff court to seek payment for work done by the Respondents for the Applicants. This matter appeared out with the jurisdiction of the Tribunal, and if separate sheriff court proceedings were raised, they submitted that the outcome of those proceedings may have a bearing in the case before the Tribunal. This motion was opposed by the Applicants. The Tribunal after hearing both parties agreed to postpone the proceedings for a period of two months, to allow the Respondents to raise a payment action. The postponement was allowed as the Respondents stated that these two applications were connected.

10. Parties were advised that prior to the application returning to the Tribunal hearing, they were to provide the Tribunal with notice as to what stage any court proceedings were at; any further request to postpone the hearing would require to be sought, and reasons were required to be provided to demonstrate why the postponement was necessary and why the Tribunal proceedings could not be concluded; it was noted that any motion to postpone may be opposed. No further documentation was received from the parties prior to the continued hearing on 10 May 2018

#### The Continued Hearing -10 May 2019

11. At commencement of the hearing the Respondents' agent sought a further postponement, no action had yet been raised at court however the Respondents had been arranging up-to-date information in order to formulate their claim; and to apply for legal aid, and they still intended to proceed to raise this action.
12. The Applicants' agent submitted that all works done by the Respondents for the Applicants had been paid for and he submitted that these works were out with the jurisdiction of the Housing and Property Chamber. He considered that as the Respondents had been receiving housing benefit they were therefore personally barred from defending these proceedings.
13. He submitted that there was sufficient information and agreed facts before the Tribunal for an order to be made without the requirement for any evidence to be led. He submitted that parties were agreed that housing benefit had been paid; parties were agreed it had not been paid to the Applicants; it was agreed that the Respondents had occupied the Property and rent was due for the Property. He submitted that Rule 18 of the Procedural Rules allowed for the order to be granted in these circumstances if it was not contrary to the interests of the parties.
14. He submitted it was not contrary to the interests of the parties for an order to be granted, as the Respondents still have a right to pursue any claim for work done by raising a civil action in the sheriff court.
15. He noted that there was a difference in the amount of rent arrears claimed against the total housing benefit paid to the Respondents. He advised that the Applicants were prepared to accept an order in relation to the reduced sum equating to the housing benefit paid.
16. He submitted that if the hearing were to proceed today then clarification required to be provided by the Respondents in relation to what work is alleged to cover the outstanding rent due in relation to the balance. He submitted that the Respondents should not be able to lead evidence for sums which are not due for the period when housing benefit was being paid.

17. He also submitted that there had been no fair notice in relation to case management discussion Note 2 point 3, and whether there had been cash payments made by the Respondents to the Applicants.
18. The Respondents' agent submitted that the hearing should be postponed. She advised that the Respondents were not disputing that the housing benefit had been paid to them; they also accepted that the housing benefit was not paid to the Applicants; that they were not putting forward another defence in respect of the rent arrears sought against the housing benefit paid. The agents did not provide notice of any payments made to the Applicants during the period when housing benefit had been paid. However given the connections between the works carried out by the Respondents and their intention to raise an action in the sheriff court the hearing should be postponed to allow that case to proceed.

### Findings in Fact

19. The Tribunal found the following facts to be established:
20. A tenancy agreement existed between the Applicants and the Respondents for the Property.
21. Rent was due for the Property.
22. That the rent of £460 was due per month by the Respondents.
23. That housing benefit totalling £11,078.45 had been paid to the Respondents during the periods 26/5/14 to 31/3/16; and 1/4/16 to 11/9/16.
24. That the housing benefit received by the Respondents had not been paid to the Applicants.
25. That there were rent arrears outstanding which totalled at least £11078.45.

### Reasons for Decision

26. Section 16 of the Housing (Scotland) Act 2014 provides that the First Tier Tribunal has jurisdiction in relation to actions arising following from a number of tenancies, including those arising under an assured tenancy within the meaning of section 12 of the Housing (Scotland) Act 1988.
27. As this tenancy is an assured tenancy the Tribunal was content that it had jurisdiction to deal with this case.
28. There was no dispute that rent payments were due. There was also no dispute that housing benefit had been paid to the Respondents. It was not

disputed that the housing benefit had not been paid to the Applicants. What was in dispute however was that the arrears of rent were not due as the Respondents had been working for the Applicants, and they had in effect carried out work in lieu of rent payments.

29. The Tribunal makes no finding on what work was carried out by the Respondents and what arrangements were in place for any work done. It may well be the case that there were arrangements in place between the parties for these works. However, as Housing Benefit had been paid for the rent in respect of the Property, the Tribunal considers that any works done by the Respondents on behalf of the Applicants, during the period that housing benefit was being paid, could not have been work done in lieu of rent, and any dispute regarding it is therefore a matter outwith the jurisdiction of the Tribunal.
30. The Tribunal does not have jurisdiction to consider what would appear to be a payment action for work done under a contract of services.
31. Had the Applicants still been seeking the larger sum of rent arrears then evidence would have had to have been led regarding the defence of "work done in lieu of rent", however as they had restricted the sum they were seeking to only that for the period when housing benefit was being paid; and as there was no disagreement between parties on those facts, then the Tribunal agreed that it did not have to hear any evidence, as there did not appear to be a dispute on these issues.
32. The Tribunal's jurisdiction is defined by statute, and we do not consider that our jurisdiction extended to consideration of payment for works when housing benefit was in place. We also considered that there was not a sufficient connection between the application and the proposed action at court which would have entitled us to postpone these proceedings any further.
33. The tenancy agreement created obligations between the parties, one of those obligations was to pay rent, and the Respondents failed to do so. There was submitted a rental sheet showing the arrears due.
34. Accordingly, we consider that we should make an order for the reduced sum sought.
35. The Applicants moved for expenses to be awarded against the Respondents, we agreed to provide the parties with time to prepare and submit written representations in respect of a claim for expenses. The Tribunal will issue a separate Direction dealing with this issue.

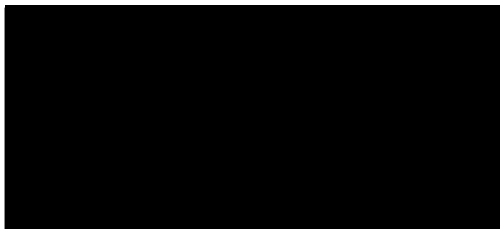
### Decision

36. The Tribunal grants an order in favour of the Applicants for ELEVEN THOUSAND POUNDS AND SEVENTY EIGHT POUNDS AND FORTY FIVE

PENCE (£11,078.45) STERLING against the Respondents. The Tribunal also agreed to make a Time-to-pay Direction under Section 1(1) of the Debtors (Scotland) Act 1987, in the following terms: The Respondents are required to pay the sum of TWO HUNDRED AND FIFTY POUNDS (£250) STERLING per MONTH.

### 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.



Legal Member/Chair

17.5.19

Date