



**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/19/0944

Re: Property at 38 Falkirk Road, Flat 9, Bonnybridge, FK4 1BD (“the Property”)

Parties:

**Link Housing Association Ltd t/a Link2Let, Link House, 2C New Mart Road,
Edinburgh, EH14 1RL (“the Applicant”)**

**Ms Marion Jankowski, formerly residing at Flat 5, The Maltings, Falkirk, FK1
5BX and whose current whereabouts are unknown (“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 21st March 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 its application payment of arrears in rental payments and recoverable costs of £1,519.79 in relation to the Property from the Respondent. The Applicant provided with its 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 could not be validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal, as she could not be traced at the address given in the application, and her current whereabouts are unknown.

Service was validly effected by advertisement in terms of Rule 6A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, and the Tribunal was provided with the Certificate of Service by advertisement.

Case Management Discussion

A Case Management Discussion was held on 13th September 2019 at Wallace House, Maxwell Place, Stirling. The Applicant's Mrs Garwood and Mr Brown appeared, and were represented by Mr Boag, solicitor. The Respondent did not appear, nor was she represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal was provided in advance of the Case Management Discussion with a receipt for the cost of a replacement carpet. Mr Boag invited the Tribunal with reference to the application and papers to grant an order for payment of the sum sought in the application.

That sum is comprised of rent arrears of £1,107.29 at the time the Respondent quit the premises, together with the sum of £412.50 evidenced by the receipt for a new carpet provided.

Mr Boag and Mrs Garwood explained that the Respondent had kept two dogs at the Property, and the lounge carpet was found after she quit the Property to be soiled with dog urine and other animal smells which had permeated through the full depth of the carpet to the floor below. Professional advice given to the Applicant was that it could not be satisfactorily cleaned, hence why it was replaced.

In response to a query from the Tribunal regarding the Applicant's title to the Property, Mr Boag, Mrs Garwood and Mr Brown confirmed that the title deed for the property provided noted the proprietor as Link Group Limited. They were able to provide the Tribunal with a copy of an intergroup lease for market and mid market properties, and explained that Link Group Limited held title to all properties held by the group, and leased them out to various subsidiaries such as the Applicant with regard to this Property.

Finally, Mrs Garwood confirmed that the rent figure of £432.77 per month contained in the lease agreement had been increased after a rent review to the monthly figure of £440.28 with effect from 1st April 2017.

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 and invoice provided, and Mr Boag's submissions, and was satisfied that this disclosed an outstanding balance due by the Respondent to the Applicants of £1,519.79. The tenant is liable for the cost of replacing the carpet in terms of clause 15.5 of the lease agreement.

Accordingly, the Tribunal shall make an order for payment of that sum.

Decision

In these circumstances, the Tribunal will make an order for payment by the Respondent to the Applicant of the sum of £1,519.79.

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

13/09/19

Date