



**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 (Act)**

**Chamber Ref: FTS/HPC/CV/23/1302**

**Re: Property at 10 Bothwell House, Hamilton, ML3 0DQ (“the Property”)**

**Parties:**

**Muirhouse Properties Ltd, 1 Millheugh Brae, Larkhall, ML9 1AS (“the Applicant”)**

**Mrs Sandra Smith, 20 Kirkwall Avenue, Blantyre, G72 9NX (“the Respondent”)**

**Tribunal Members:**

**Alan Strain (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application be dismissed as the debt has prescribed.**

**Background**

This is an application under Rule 70 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (Rules)* and section 16 of the Act for an order for repayment of alleged rent arrears.

The following documents were considered by the Tribunal:

1. Application received 21 April 2023;
2. Short Assured Tenancy Agreement (**SAT**) commencing 28 December 2016;
3. Schedule of Rent Arrears at 26 February 2018;
4. Respondent’s Written Submissions dated 9 August 2023;
5. CMD Note dated 16 August 2023;
6. CMD Notification to Applicant’s Letting Agent dated 19 October 2023.

**Case Management Discussion (CMD)**

The case called for a CMD by conference call on 24 November 2023. The Applicant did not participate and was not represented. The Respondent did not participate but was represented by her solicitor.

The Tribunal delayed the start of the CMD to see if the Applicant would participate. The Applicant did not.

The Tribunal were satisfied that the Applicant had received notification of the Case Management Discussion and that the Tribunal could determine the matter if it considered it had sufficient information to do so and the procedure was fair.

At the previous CMD the Applicant's agent had participated and had sought time to obtain legal advice. This was granted by the Tribunal and the Tribunal had made it clear that it expected written representations from the Applicant 14 days prior to the CMD. No written representations were lodged.

The Tribunal determined that it would proceed in absence of the Applicant.

The Tribunal then considered the written representations lodged by the Respondent's solicitor to the effect that the debt had prescribed under the **Prescription and Limitation (Scotland) Act 1973**. The debt was subject to the 5 year time limit, with the 5 year period running from 28 January 2018 (being the last date on the Applicant's rent spreadsheet.) As the current application was lodged more than five years after the 28 January 2018, the debt has prescribed. If the debt has prescribed the application should be dismissed as the Applicant no longer has any right to seek recovery of the rent arrears.

The Tribunal in so far as material made the following findings in fact:

1. The Parties let the subjects under an SAT commencing 28 December 2016;
2. The Respondent was Guarantor under the SAT;
3. As at 28 January 2018 (being the last rent due under the SAT) there were £1,045.21 rent arrears.

Having made such findings in fact the Tribunal considered that the debt had prescribed under section 6 of the **Prescription and Limitation (Scotland) Act 1973** as proceedings had not been raised within the 5 year limitation period. As such the Tribunal had no option other than to dismiss the application.

## **Outcome**

- **Application dismissed.**

## **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.**

**24 November 2023**

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**Legal Member/Chair**

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**Date**