

**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 2014**

**Chamber Ref: FTS/HPC/CV/18/3304**

**Re: Property at 5/18 Sailmaker Road, Edinburgh, EH6 7JR (“the Property”)**

**Parties:**

**Leith Links NHT 2011 LLP, 19 West Tollcross, Edinburgh, EH3 9QN (“the Applicant”)**

**Mr Livio Rocha, 5/18 Sailmaker Road, Edinburgh, EH6 7JR (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent is in breach of the tenancy agreement with the Applicant and has failed to pay heating and hot water charges. The Tribunal accordingly has decided to make an order for payment in the sum of ONE THOUSAND FIVE HUNDRED AND EIGHTY EIGHT POUNDS AND SEVENTY ONE PENCE (£1588.71) STERLING. The order for payment will be issued to the Applicant after the expiry of 30 days mentioned below in the right to appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.**

**Background**

1. By application dated 7 December 2018 under Rule 70 of the First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”) the Applicant’s solicitor applied to the Tribunal for an order for payment against the Respondent in relation to heating and hot water charges which were said to be due under a tenancy agreement with the Applicant.
2. On 20 December 2018 the Tribunal gave notification of acceptance of the application to the Applicant’s solicitor.

3. On 9 January 2019 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 23 January 2019. The Tribunal also advised parties on 9 January 2019 that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 29 January 2019. This paperwork was served on the Respondent by Michael Gallagher, Sheriff Officer, Livingston on 11 January 2019 and a certificate of execution was received by the Tribunal administration.
4. The Respondent did not make any written representations by 23 January 2019.
5. The CMD proceeded on 29 January 2019. The Applicant was represented by Mr Mathieson from TC Young solicitors and the Respondent appeared personally. The Tribunal had before it a tenancy agreement between the parties dated 11 May 2016, 2 letters from the Northern Housing Company to the Respondent dated 30 April 2018 and 24 September 2018 and 2 invoices from Insite Energy both dated 31 October 2018 in the sums of £1588.71 and £26.23.
6. The CMD proceeded. The Applicant's solicitor referred to and relied on Clause 8 of the tenancy agreement. He explained that Insite Energy were the Landlord's agent for collection of utility bill charges and that the Respondent had failed to pay those charges. The Respondent did not dispute his liability to pay the heating and hot water charges but did dispute the sum outstanding, although he could not advise of how much he had paid. He advised the Tribunal that he was making arrangements to pay all sums due.
7. The Applicant also moved to increase the sum sought to £1658.14 on account of further unpaid charges.
8. The Tribunal continued the case to a further CMD for further documentation to be produced and in particular the agreement between Insite Energy and the Landlord and invoices. The Tribunal issued a Notice of Direction requiring these documents to be produced by the Applicant and various bank statements and receipts to be produced by the Respondent. The CMD was also continued for the Applicant to confirm the total sum outstanding and whether the Applicant had paid the sum sought to Insite Energy. The Tribunal continued consideration of the Applicant's application to increase the sum sought in order for it to be considered with the benefit of all the documentation.
9. At the continued CMD on 29 April 2018 the Applicant was represented by Mr Mathieson from TC Young solicitors and the Respondent appeared personally. Two members of staff from the Applicant were also in attendance. The Applicant had lodged an Agreement between Insite Energy and Hillcrest Housing Association, the Respondent's statement of account dated 15 April 2014 – 29 January 2019 and invoices from 21 December 2013 – 30 November 2018. These documents had been served on the Respondent by Sheriff Officers on 20 March 2019. The Respondent had not lodged any

documents in terms of the Notice of Direction and advised the Tribunal that he was not going to do so as he was no longer disputing the sum being sought.

10. Mr Mathieson explained that he had been unable to obtain any agreement between Insite Energy and the Applicant. The Applicant was seeking advice on the contractual relationship with Insite Energy and sought a further adjournment of the CMD. The Respondent had no opposition to that and accordingly the case was continued to a further CMD.

### **Continued Case Management Discussion**

11. The Tribunal held a further CMD on 24 May 2019. Mr Mathieson from TC Young again appeared on behalf of the Applicant. There was no appearance by or on behalf of the Respondent.
12. The Tribunal had before it all documents lodged at the previous two CMDs. It also had a copy of the Applicant's title MID157589 relating to Sailmaker Road, Edinburgh.
13. Mr Mathieson addressed the Tribunal on the Applicant's entitlement to seek the sums sought. He referred the Tribunal to Clause 8 of the tenancy agreement and submitted that in terms of Clause 8 Insite Energy were identified as the agent acting on behalf of the Applicant and was responsible for reading individual tenants' meters and issuing invoices to the tenants for heating and hot water.
14. He referred also to the Agreement between Insite Energy and Hillcrest Housing Association and explained that the Applicant was a subsidiary company of Hillcrest Housing Association who had significant control over the Applicant. He passed the Tribunal a printout from Companies House to show that Hillcrest Housing Association had more than 50% but less than 75 % ownership of voting rights. He explained that the Agreement related to the property at Sailmaker Road, Edinburgh which governed the relationship with Insite Energy to supply heating and hot water to Sailmaker Road. He referred to Clause 2.3 of that Agreement in terms of which Hillcrest warranted that it would enter into legal agreements with customers who were defined in Clause 1 as "occupiers". In terms of those legal agreements, which were the individual tenancy agreements, each tenant would be legally obligated to recognise Insite Energy as acting for and on behalf of Hillcrest. He also referred to Clause 3.2 in terms of which Insite Energy shall issue monthly invoices to Hillcrest for the heating and hot water. He explained Hillcrest had paid Insite Energy the sum outstanding which had then been paid to Hillcrest by the Applicant under the group structure arrangement.
15. He also referred to the statement of account for the Respondent and the various invoices lodged. The Tribunal had noted that these pre dated the tenancy agreement. Mr Mathieson explained that the Respondent had lived in the Property since the start of the statement of account in April 2014 under a previous tenancy agreement on the same terms.

16. On the basis of the tenancy agreement, the invoices and statement of account, the operation of the group structure as between the Applicant and Hillcrest and the Agreement between Insite Energy and Hillcrest he submitted the Applicant was entitled to an order for payment. He repeated his request to seek a higher sum which had been continued from the CMD of 29 January 2019.
17. The Tribunal enquired whether the Respondent had made any payments. Mr Mathieson explained the Respondent had made numerous promises to pay, but had not done so.

### **Findings in Fact**

18. The Applicant is the heritable proprietor of Sailmaker Road, Edinburgh under Title Number MID157589.
19. The Applicant and the Respondent entered into a tenancy agreement signed and dated 11 May 2016 with a commencement date of 1 June 2016 in relation to the Property. The Respondent has resided in the Property since April 2014 under a tenancy agreement on the same terms.
20. The Respondent is liable to pay the heating and hot water charge in terms of Clause 8 of the tenancy agreement.
21. The sum outstanding and due to be paid to 31 October 2018 is £1588.71. Further charges have accrued since 31 October 2018.
22. Insite Energy are the agents of the Applicants with responsibility for taking meter readings and issuing invoices of individual properties within Sailmaker Road, Edinburgh.
23. The Applicant is a subsidiary company of Hillcrest Housing Association. Hillcrest Housing Association have significant control over the Applicant and have authority under the group structure to enter into the Agreement with Insite Energy governing the provision of heating and hot water at Sailmaker Road, Edinburgh.
24. The Applicant has paid the sum sought to Hillcrest Housing Association who had been invoiced by Insite Energy in terms of Clause 3.2 of the Agreement between Insite Energy and Hillcrest Housing Association.

### **Reasons for Decision**

25. In light of the Respondent's acceptance of liability for payment of the sum outstanding, the submissions made by Mr Mathieson on behalf of the Applicant and the documents before the Tribunal, the Tribunal was satisfied the Applicant had title to pursue the sum outstanding and was entitled to payment by the Respondent. The Tribunal was prepared to grant an order for payment against the Respondent for the sum sought in the application of

£1588.7. The Tribunal was not prepared to grant an order for an increased sum in the absence of the Respondent, the Applicant not having complied with Rule 14A of the Regulations. The Tribunal was of the opinion that without there being a formal intimation that an increased sum was being insisted on, the Respondent would have been prejudiced had an order for an increased sum been granted.

### **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.

**S Evans**

Legal Member/Chair

Date

24 May 2019.