



**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/19/2405**

**Re: Property at 50 Westend Drive, Bellshill, Lanarkshire, ML4 3AS (“the  
Property”)**

**Parties:**

**Mr David Gemmell, 41 Kenilworth Crescent, Bellshill, Lanarkshire, ML4 3EQ  
 (“the Applicant”)**

**Mrs Jessica Walker, 50 Westend Drive, Bellshill, Lanarkshire, ML4 3AS (“the  
Respondent”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member) and Gordon Laurie (Ordinary 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 1<sup>st</sup> July 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 his application immediate payment of outstanding rent arrears in full, which as at the date of the application totalled £4,500.00.

The Applicant provided with his application copies of a written rent schedule agreement, various bank statements, and a rent arrears statement.

The Respondent has been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 9<sup>th</sup> September 2019, and the Tribunal was provided with the execution of service.

There is a substantial procedural history in this matter, which the Tribunal does not need to fully narrate for the purposes of this decision. Both parties have produced a substantial amount of material regarding the history of matters between them.

The parties had entered into a verbal tenancy agreement, which they had never reduced to writing. That agreement had a start date for the lease of 1<sup>st</sup> July 2015, with agreed monthly payments of £450.00 for 12 months.

A Case Management Discussion was held on 15<sup>th</sup> January 2020 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant appeared, and was not represented. The Applicant's wife, Mrs Agnes Gemmell attended with the Applicant as a supporter. The Respondent did not appear, and was not represented.

Two previous dates for Case Management Discussions had been postponed at the request of the Respondent for various reasons, which postponement requests were opposed by the Applicant.

The Tribunal issued directions to the parties after considering the extensive material provided to it by both parties and set a hearing.

## **Hearing**

A Hearing was held on 20<sup>th</sup> February 2020 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant again appeared, and was not represented. The Applicant's wife, Mrs Agnes Gemmell again attended with the Applicant as a supporter. The Respondent again did not appear, and was not represented.

The Respondent had e-mailed the Tribunal the day before the Hearing indicating that she was unwell, and would not be attending. She did not seek a postponement, and referred the Tribunal to all of the previous material which she had lodged in support of her opposition to the granting of the order sought by the Applicant.

Rule 29 (Hearing case in the absence of a party) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended provides that if a party does not appear at a hearing, the Tribunal may proceed with application upon the representations of any party present and all the material before it, if satisfied that the requirements of giving notice of a hearing have been complied with.

The Tribunal was so satisfied, and proceeded with the application in the absence of the Respondent upon the Applicant's representations and all the material before it, including that provided by the Respondent.

The Applicant had provided an updated rent arrears statement in response to the Tribunal's earlier direction of 15<sup>th</sup> January 2020, which disclosed arrears of rent

currently totalling £8,100.00. That statement had been intimated timeously on the Respondent by the Tribunal.

The Tribunal was invited by the Applicant with reference to the application and papers to grant an order for payment of the sum of £8,100.00, which is the current amount of rent arrears as of today's date.

From the extensive material lodged by the Respondent, it appears that she makes a number of complaints about the Applicant not properly fulfilling his duties as landlord in a number of respects.

However, the Applicant advised that in relation to the few complaints she did make to him (the main one relating to a problem with a lavatory), he arranged for these issues to be dealt with. He noted that the Respondent did not at any time prior to this application indicate to him that the reason for her non-payment of any rent at all since September 2018 was because she was retaining payment in respect of any alleged breaches of the tenancy agreement by him.

The Tribunal considered the extensive material provided by the Respondent, and noted that there appeared to be nothing there to suggest that the Respondent had at any time indicated to the Applicant prior to this application being brought that she was retaining rent as a result of any breaches of the tenancy agreement by him.

There appeared to be little evidence that any material defects in the Property had been identified to the Respondent which he had failed to remedy, and no evidence at all that the Respondent had ever indicated prior to the raising of this application that as a result of failure by the Applicant to remedy any such material defects she was retaining rental payments otherwise due as a result of the Applicant's breach of the tenancy agreement.

The rent arrears are substantial, and have accumulated as a result of a failure to make any payments at all for a period of approximately one and a half years.

### **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 an assured tenancy such as this.

The Tribunal carefully considered all of the material provided by both parties, and the Applicant's submissions, and was satisfied that these disclosed an outstanding balance due by the Respondent to the Applicant in respect of rent arrears of £8,100.00 (the rent due in terms of the tenancy agreement being £450.00 per month).

The Tribunal considered that the Respondent had not produced evidence sufficient to justify the retention of rent by her, for the reasons noted above. She has also failed to indicate whether she has retained the sums due in a bank account to allow for payment in the event that any right of retention which she might have had come to an end by the Applicant remedying any material breach which had occurred.

Accordingly, for these reasons, the Tribunal shall make an order for payment.

### **Decision**

In these circumstances, the Tribunal will make an order for payment by the Respondent to the Applicant of the sum of £8,100.00.

### **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.**

**N Kinnear**

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**Legal Member/Chair**

20/02/20

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**Date**