

**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/18/1924**

**Re: Property at 26 2F1 Prince Regent Street, Edinburgh, EH6 4AS (“the  
Property”)**

**Parties:**

**Ms Selina Pang, 19 Dudhope Gardens, Dundee, DD3 6TX (“the Applicant”)**

**Mr Ben Rodger, East Grangemuir, Stenton, Dunbar, EH42 1TA (“the  
Respondent”)**

**Tribunal Members:**

**Anne Mathie (Legal Member)**

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

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

**An order for payment of rent arrears in the sum of £2065 should be made**

- **Background**

This is a civil case for a payment order for rent arrears due under the relevant tenancy agreement of the property known as 26 2F1 Prince Regent Street, Edinburgh, EH6 4AS in the sum of £2065 in terms of section 16 of the Housing (Scotland) Act 2014. Documents lodged with the Tribunal were the tenancy agreement, the tenant information pack, correspondence in relation to a rent increase, correspondence regarding rent arrears, a rent statement, and an AT5. The case called at a previous Case Management Discussion on 12 October 2018. The case was continued to a further Case Management Discussion today. The legal member had been concerned at the previous Case Management Discussion about whether sufficient time had been given for the parties to provide written representations in terms of Chamber Rule

9(2)(a). The respondent did not attend the previous Case Management Discussion nor did he submit any written representations. Additional information was obtained by the Tribunal at the last Case Management Discussion. The applicant's representative had advised that the tenancy had been a joint tenancy with the respondent and his brother Connor Rodger. The applicant did not know Connor Rodger's whereabouts and that was why the only respondent was Ben Rodger. The Tribunal noted that both tenants were jointly and severally liable in terms of the tenancy agreement. The Tribunal had also requested information regarding the rent increase notified to the respondent on 17 November 2017 to take effect on 19 January 2018. The applicant's representative had submitted that there was a contractual basis to the rent increase and that the condition of giving two months notice had been complied with. The applicant's representative had also confirmed that the tenants had been served with a section 33 notice and notice to quit to end the tenancy as at 19 March 2018. Post Case Management Discussion the legal member had considered the fact that the application had been made in terms of Rule 111 of the Chamber Rules instead of Rule 70 but did not consider it appropriate in the circumstances to reject the application on this ground. Taking into account the overriding objective set out in Rule 2 of the Chamber Rules and the fact that Rules 70, 91 and 111 had the same requirements and each related to applications for civil proceedings, the only difference being the statutory basis on which the Tribunal had acquired jurisdiction to hear those cases, the legal member reserved the question of the relevant Rule number to be addressed at the next Case Management Discussion. A direction was contained in the Notes of the previous Case Management Discussion that the applicant's representative should provide to the Tribunal on or before 2 November 2018 copies of the relevant section 33 notices and notices to quit along with executions of service of these notices. The notices and an invoice from Sheriff Officers was emailed to the Tribunal on 23 October 2018. A further Case Management Discussion was set down for today and this was intimated to parties. No written responses have been received from the respondent. Sheriff Officers attended at the respondent's residence (the applicant's representative having advised at the previous Case Management Discussion that this was the respondent's mother's address where the respondent had advised her he would be returning to live) on 5 November 2018 to serve notification and papers in respect of today's Case Management Discussion. The covering letter dated 18 November 2018 addressed to the Tribunal stated that "Enquiries were made with neighbours who confirmed the respondent's continued residence within the property." Based on this the Legal Member was satisfied that, on the balance of probabilities, the respondent had been provided with reasonable notice of the date, time and place of the Case Management Discussion.

- The Case Management Discussion  
The Case Management Discussion took place today in the absence of the respondent. Harry Crombie from Crombie and Co. appeared on behalf of the applicant. The Legal Member asked for his views on the issue raised in the Case Management Discussion notes regarding the Rule number. Mr Crombie requested that the rule number be amended from Rule 111 to Rule 70 as this case concerned civil proceedings arising out of a tenancy under the 1988 Act.

The Legal Member also asked for clarification in relation to the rent figures and asked for a copy of the actual certificate of execution of service of the section 33 Notices and Notices to Quit. Mr Crombie provided copies of these. Mr Crombie confirmed there had been no further correspondence from the respondent since his email of 16 April 2018.

- Findings in Fact

The respondent was jointly and severally due to pay rent in terms of his tenancy agreement and had failed or at least delayed to do so. The rent stated on the tenancy agreement was £675 per month and this had been increased to £695 per month in accordance with the tenancy agreement with effect from 19 January 2018. The last payment made by the respondent was in November 2017. The respondent was due to pay rent until 19 March 2018 which is the date on the Notice to Quit and Section 33 Notice. The respondent emailed the applicant's representative on 16 April 2018 advising that he would be in touch in the next few days to arrange a payment plan for the rent arrears but has made no further contact.

The applicant is entitled to the order sought for payment of rent arrears in the sum of £2065.

- Reasons for Decision

The Tribunal proceeded on the basis of written documents which were before it as detailed above and further representations made by the applicant's representative. There was nothing before the Tribunal challenging or disputing any of the evidence before it.

- Decision

The applicant was entitled to an order for payment for rent arrears in the sum of £2065

## 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.**

Anne Mathie

**Legal Member/Chair**

**Date**

23 November 2018