

**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 of the Housing (Scotland) Act 1988**

**Chamber Ref: FTS/HPC/CV/19/2427**

**Re: Property at Seaview Top Flat, 67 Main Street, Inverkip, PA16 0AT (“the Property”)**

**Parties:**

**Ms Tina Beales trading as Direct Homes, 0/1, 42 Anniesland Road, Glasgow, G13 1XB (“the Applicant”)**

**Mr Thomas Dilys, Seaview Top Flat, 67 Main Street, Inverkip, PA16 0AT (“the Respondent”)**

**Tribunal Members:**

**Colin Dunipace (Legal Member) and Elizabeth Currie (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order should be granted against the Respondent in favour of the Applicant in respect of arrears of rent in the sum of Four Thousand Four Hundred and Forty Pounds (£4,440) Sterling.**

This Application called before this Tribunal for a full Hearing on 10 April 2019 in Gamble Halls, Gourrock, 44 Shore Road, Gourrock, PA19 1RG. Ms Tina Beales (hereinafter the Applicant) was present at this Hearing, and was accompanied by her son who was present as an observer. The Applicant was not represented at this Hearing. Mr Thomas Dilys (hereinafter the Respondent) was also present and was represented at time by Ms Helen McHugh of Messrs Brown and Co, LLP, Solicitors.

## Background

1. By Application of 20 September 2018 the Applicant sought an Order from the Tribunal requiring the Respondent to pay (i) rent at that time amounting to £1,440 in respect of the property; (ii) £3,150 for a repair to the roof and chimney at the property for damage occasioned to the property; (iii) £150 for out-of-pocket expenses suffered by the Applicant due to the actions of the Respondent; and (iv) according to the Application “costs totally £3,440”. This Application was accepted by the Tribunal and the matter initially called at a Case Management Discussion on 16 November 2018 at which time the Applicant was present. The Respondent was neither present nor represented at this Discussion. At that time the Tribunal accepted the Applicant’s claim in relation to the rent due, but as there was no other evidence before it in relation to the other heads of claim a Hearing on evidence was fixed for 10 January 2019. At this Hearing neither the Applicant nor the Respondent were present and the Tribunal decided to make an Order in favour of the Applicant in respect of the sum due for rent in the sum of £1440, and in the absence of any further evidence made no Order in respect of the other sums claimed. Upon receiving notification of this decision the Applicant contacted the Tribunal advising that she had not been advised of the Hearing date, and that if she had been so advised then she would have attended and sought the full sum sought on the Application. In these circumstances the Tribunal exercised its powers in in terms of rule 39 of the First-tier Tribunal for Scotland (Housing and Property Chamber) (Rules of Procedure) Regulations 2017 and recalled the previous decision of 10 January 2019.

## The Hearing

2. This Application accordingly called as a full Hearing on 10 April 2019. At this Hearing the Applicant was present but not represented. The Respondent was also present and represented as aforementioned.
3. The Applicant sought and Order from the Tribunal in respect of outstanding rent due in relation to the property. In this regard reference was made to an Inventory of Production which had been lodged on behalf of the Applicant in respect of her Eviction action, and which showed that the amount due now in relation to outstanding rent was in the sum of £4440, and the Applicant sought to amend the sum due in this regard. This motion was not opposed by the Respondent and was duly allowed by the Tribunal. There were no further productions lodged by the Applicant. The Respondent did not lodge any productions.

4. In relation to the damage occasioned to the roof of the property the Applicant made reference to the Fire Report which had been lodged with the original Application. This was a Scottish Fire Service incident Report dated 5 July 2018 which made reference to the Fire Service having attended at the property on 25 June 2018. This report made reference to damage having been occasioned to the roof of the property. The fire was noted to have originated in the roof space of the property and that the first item ignited was paper/cardboard. The Applicant had also lodged an estimate for the damage from J Lewis Roofing and Property Maintenance in relation to fire damage. This estimate was in the sum of £3150. The Applicant advised that this work had been undertaken and had been paid for, albeit no invoice was lodged with the Tribunal, albeit reference was made to three payments made on 30 August and 5 and 13 September 2018. The position of the Applicant was that the Respondent was responsible for these costs as he had been burning paper on a very hot day. The Applicant confirmed that there was no prohibition on the Respondent from using the chimney in the property, but the fact that there had been a fire was indicative of the fact that this was due to the fault of the Respondent. Having spoken to the Fire Chief the Applicant stated that she had been advised that the cause of the fire had been burning papers on a very hot day. The Applicant also advised that she had made no claim on her insurance policy in respect of this damage. The Applicant also advised that she was seeking payment in the sum of £150 for her out-of-pocket expenses incurred as a result of her requiring to visit the property on 4 occasions when the Respondent would not allow her and her tradesmen access to the property despite giving more than 24 hours' notice. The Applicant advised in this regard that the police had required to attend on 15, 20 and 24 September 2019 to enable access to the property. In relation to her out-of-pocket expenses the Applicant advised that she had travelled by car or train but that she had no vouching in this regards. The Applicant did not provide any further specification in relation to the sum of £3440 sought by her.
5. On behalf of the Respondent it was conceded that the sum sought in respect of rent was due and the amount sought was not disputed. In relation to the fire damage the Respondent's solicitor advised the Tribunal that the Fire Report did not indicate that anyone was responsible for the fire and that the Respondent himself was puzzled as to its actual cause given that he did not understand how burning a few papers could cause damage to the roof. In any event even if the fire had been caused in this way, there had been no fault on the part of the Respondent who was merely using the fire in a normal fashion. The Respondent also queried why the Applicant had not made a claim in respect of the cost of the damage to the roof under the terms of any insurance cover held by the Applicant. The Respondent also disputed that he had occasioned the out-of-pocket expenses incurred by the Applicant,

although he did concede that the police had been called on a number of occasions.

### **Findings in Fact**

1. The parties entered into an Assured Tenancy in relation to the property at Seaview, Top Flat, 67 Main Street, Inverkip, PA16 0AT on 12 September 2017. The Respondent leased the subject property from the Applicant. The monthly rental due in respect of this property was in the sum of £400 per month;

2. That no rent had been paid by the Respondent since May 2018. The amount outstanding in relation to unpaid rent due by the Respondent was in the sum of £4,440.

### **Findings in Fact and Law**

1. The Applicant is entitled to the sum of £4,440 from the Respondent.

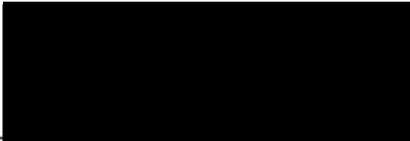
### **Reasons for Decision & Decision**

Having heard from the parties the Tribunal was satisfied that the Applicant was entitled to recover from the Respondent the full sum of £4,440 in respect of unpaid rent from the Respondent. In any event the Respondent did not dispute that this sum was due to the Applicant. In relation to the recovery of sums due in relation to damage to the roof of the property, the Tribunal was not satisfied that the Applicant had established that the aforementioned damage had been occasioned as a result of any fault on the part of the Respondent. In this regard the Tribunal had particular regard to the terms of the Fire Incident Report lodged by the Respondent, and observed that this was not a chimney fire. Further the Tribunal noted that the Report recorded that the cause of the fire was "Accidental", and that in the section dealing with whether there were human factors contributing to the fire, that the Fire Service had recorded "None". The Tribunal did not accept that the evidence submitted by the Applicant did not establish that the fire had been occasioned by any fault by the Respondent (nor indeed by any person). It was not enough to simply suggest that by burning some personal papers in the fireplace that the Respondent had caused the damage to the roof. Accordingly the Tribunal determined that this aspect of the claim had not been established by the Applicant. The question of the vouching of this aspect of the Application was accordingly not an issue, although if it had been, then the Tribunal would have accepted the evidence from the Applicant in this regard. In relation to the question of out-of-pocket expenses, the Tribunal observed that these expenses had not been vouched and that the Applicant had suggested that the sum

sought in this regard had been a nominal amount of £150. In these circumstances the Tribunal was unable to find that the Applicant had established the exact extent of the expenses that she was seeking to recover. The Tribunal also observed in any event that it would not be unknown or unreasonable for a landlord to incur some expenses in the course of checking their properties during the course of the tenancy. Accordingly the Tribunal was unable to make any award in respect of this claim. Finally the Tribunal noted that no evidence whatsoever had been lodged by the Applicant in relation to the additional sum sought of £3,400 and accordingly the Tribunal made no award in respect of this aspect of the claim.

### **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.**

  
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Legal Chair

29/4/19  
\_\_\_\_\_  
Date