



**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/23/0978

Property: 53 Brankston Avenue, Stonehouse ML9 3JE ("Property")

Parties:

**Elizabeth McNally, West Town Farm Cottage, Stonehouse ML9 3PS
("Applicant")**

**Buchanan Burton, 2 Strathmore House, East Kilbride G74 1LQ ("Applicant's
Representative")**

Sharon Graham, 53 Brankston Avenue, Stonehouse ML9 3JE ("Respondent")

Tribunal Members:

Joan Devine (Legal Member)

Elizabeth Currie (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber)
("Tribunal") determined that an order for payment of £4,050 should be made.**

Background

1. The Applicant sought an order for payment of £4,050. The Applicant had lodged Form F. The documents produced were: Short Assured Tenancy Agreement dated 13 June 2016 and statement of rent arrears as at November 2022.
2. A case management discussion ("CMD") took place on 23 May 2023. In advance of the CMD the Respondent lodged a written submission in which she stated that the rent had been paid in full by way of cash payments. Ian Buchanan of the Applicant's Representative was in attendance. Kenneth Greener of Kenneth M Greener Solicitors attended on behalf of the Respondent. The issue identified as being in dispute was whether or not the rent claimed had in fact been paid by the Respondent directly to the Applicant in cash. The Tribunal issued a Direction and a Hearing was fixed to take place on 16 August 2023.

3. In terms of the Direction the Tribunal required the Parties to lodge a list of witnesses they intended to call at the Hearing and a list of all documents on which they intended to rely. The Respondent did not respond to the Direction. By email dated 8 August 2023 the Respondent's Representative stated that they were no longer instructed. By email dated 9 August 2023 the Respondent's Representative lodged a list of witnesses and inventory of productions containing screenshots of text messages and copies of diary entries made by the Applicant for the period 31 December 2021 to 31 December 2022.

Hearing

4. A Hearing took place on 16 August 2023. The Applicant was in attendance along with Ian Buchanan from the Applicant's Representative. There was no appearance by or on behalf of the Respondent
5. The Applicant told the Tribunal that the Respondent continued to reside in the Property although she thought that she had obtained alternative accommodation and was planning to move out. She said that the Respondent lives in the Property with her two sons. She is not in employment. The Applicant said she had not received payment of the rent by way of any benefits. The Applicant said that she did not own any other rental properties. She said that she manages the Property herself with assistance from her grandsons who are tradesmen.
6. Mr Buchanan said that the rent had not been paid since February 2022. The Tribunal noted that there had been no application to amend. Mr Buchanan confirmed that no amendment had been sought. He said that a notice to leave had been served and had expired in June 2023.
7. The Tribunal asked about whether the Respondent was withholding rent due to outstanding repairs. The Applicant said that no repairs were required. She said that the kitchen was new and a new central heating system had been installed. She said that there had been times when the Respondent withheld rent by agreement to meet the cost of items such as a new freezer.
8. The Tribunal noted that the tenancy agreement provided for the rent to be paid into a Bank of Scotland account. The Applicant said it had never been paid into that account and had always been paid in cash. She said she did not provide the Respondent with a receipt. She said she did not maintain a rent book. She said that she kept all of the information in her head. She said that her communications with the Respondent were by telephone. She said she would call her if the rent was late. On occasion she would call at the Property when the rent was late. She said that she would attend the Property to collect the rent

although during covid the Respondent would give the rent to the Applicant's granddaughter who lives next door to the Property.

9. Mr Buchanan referred to the copy diary entries lodged. He said that a number of entries evidenced no rent being paid. He referred to entries dated 21 March, April, May, June, July, August, September, October and November 2022.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a tenancy agreement dated 13 June 2016 which commenced on 21 June 2016.
2. In terms of the tenancy agreement the rent was £450 per calendar month payable on the 21st of each month
3. Clause 2.1 of the tenancy agreement provides that the rent is to be paid to the Applicant by standing order into the Bank of Scotland account specified in clause 2.1 of the tenancy agreement.
4. Notwithstanding clause 2.1 the rent was paid by the Respondent to the Applicant in cash.
5. The Respondent has failed to pay the rent for the period March to November 2022. The sum outstanding is £4050.

Reasons for the Decision

The Tribunal determined to make an Order for payment. In terms of the tenancy agreement rent was due at the rate of £450 per month. The Respondent had failed to pay the rent for the period March to November 2022.

Decision

The Tribunal grants an order for payment of £4050.

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.

J Devine

Legal Member

Date : 16 August 2023