

**Housing and Property Chamber**  
First-tier Tribunal for Scotland



**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/18/1689**

**Re: Property at 97 Hazel Avenue, Culloden, Inverness, IV2 7JX ("the Property")**

**Parties:**

**Mrs Coleen Macdonald, Reverend Kenneth Macdonald, 20 Garrabost, Isle of  
Lewis, HS2 0PW ("the Applicants")**

**Mrs Ivy Mvula-Berry, 97 Hazel Avenue, Culloden, Inverness, IV2 7JX ("the  
Respondent")**

**Tribunal Members:**

**Helen Forbes (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 should be granted in favour of  
the Applicants.**

**Background**

1. This is an application in terms of Rule 70 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules"). The Applicants are seeking an order for payment in the sum of £5440 in terms of s16 of the Housing (Scotland) Act 2014, with interest thereon at 8% and expenses.
2. The Tribunal had before it the following documents:
  - (i) Application dated 4<sup>th</sup> July 2018.
  - (ii) Tenancy agreement between the parties dated 25<sup>th</sup> and 27<sup>th</sup> November 2005.
  - (iii) Rent account statements

- (iv) Correspondence from the Applicants to the Respondent dated 24<sup>th</sup> January 2012
- (v) Correspondence from the Applicants to the Respondent dated 2nd January 2018
- (vi) Certificates of Intimation upon the Respondent dated 10<sup>th</sup> September and 9<sup>th</sup> October 2018.
- (vii) Written intimation of motion to increase sum sought dated 2<sup>nd</sup> October 2018.
- (viii) Case note from previous Case Management Discussion of 25<sup>th</sup> September 2018.

### **Case Management Discussion**

3. The Applicants were present, accompanied by their representative, Laura McCarthy, Munro & Noble Solicitors. The Respondent was not present. The Tribunal was satisfied that the Respondent had received notification of the Case Management Discussion and that in terms of Rule 29, the case could be heard in the absence of the Respondent.

Ms McCarthy said there had been no contact from the Respondent since the last hearing. No progress had been made. The situation is now causing the Applicants extreme financial hardship. The Applicants have always been keen to assist the Respondent to sort out any problems with paying the rent, allowing her time to do so. The Citizens Advice Bureau made contact with the Applicants in February 2018, following a letter from the Respondent stating that she was leaving the Property. There has been no further contact from the Applicant or the Citizens Advice Bureau, and, as far as the Applicants are aware, the Respondent has not left the Property.

Ms McCarthy moved the Tribunal to increase the sum sought to £5540, as set out in a written amendment lodged on behalf of the Applicants on 2<sup>nd</sup> October 2018, and thereafter to grant an order for payment in the increased sum.

### **Findings in Fact**

4. (i) The parties entered into a Short Assured Tenancy on 1<sup>st</sup> December 2005.
- (ii) The rent was initially £500 per month. This was increased to £520 per month in February 2012.
- (iii) Rent arrears began to accumulate from September 2017. Thereafter, rental payments were sporadic and did not cover the rent due each month. There has been no payment of rent since January 2018.
- (iv) Rent lawfully due to the Applicants, in terms of the lease between the parties, has not been paid by the Respondent.
- (v) Arrears in the sum of £5440 have accrued.
- (vi) The Applicants are entitled to recover the unpaid rent as set out in the application and as increased by the Applicants' amendment of 1<sup>st</sup> October 2018.
- (vii) The tenancy agreement does not provide for contractual interest to be paid on any outstanding rent.

## Reasons for Decision

5. The Respondent has failed to make payment of the rent lawfully due in terms of the lease between the parties. Motion has been made to amend the application to increase the sum sought. Notice of the motion to amend the application was intimated to the Respondent by the Tribunal on 23<sup>rd</sup> October 2018. There was no appearance on behalf of the Respondent and no representations made to the Tribunal. In all the circumstances, the Applicants are entitled to an order for payment in the sum sought.

## Decision

6. The motion to amend the sum sought having been granted, an order for payment in the sum of £5440 is granted in favour of the Applicants. There being no provision for the payment of contractual interest in the tenancy agreement, no award of interest was made. No award of expenses was made against the Respondent.

## 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.**

Helen Forbes

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Legal Member/Chair

15 November 2018  
Date