

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 (“2014 Act”)**

**Chamber Ref:** FTS/HPC/CV/18/2055

**Re:** 43 Springfield Square, Bishopbriggs, Glasgow, G64 1PU  
 (“the Property”)

**Parties:**

**Mr Shailinder Kamboh, 5 Tay Crescent, Bishopbriggs, G64 1EU (“the Applicant”)**

**Mr Mark Brown and Ms Paula Kyle, 14 Lochgreen Street, Glasgow, G33 1DW (“the Respondents”)**

**Tribunal Members:**

**Pamela Woodman (Legal Member) and Gerard Darroch (Ordinary Member)**

**Present:**

The hearing in relation to case reference FTS/HPC/CV/18/2055 took place at 10.00am on Monday 21 January 2019 in room 109 of the Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT on (“**the Hearing**”). The Applicant was not present at the CMD but was represented by Rachel Thomson of Friends Legal (“**Applicant’s Representatives**”). The Respondents were not present, nor were they represented, at the Hearing. The clerk to the Tribunal was Alan Kerr. Ms Namrah Ali Khan (“**Ms Khan**”) of Martin & Co., who were the Applicant’s letting agents, was present in the capacity of a witness for the Applicant.

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

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

**BACKGROUND**

1. An application was made to the Tribunal under section 16 of the 2014 Act for civil proceedings in relation to matters associated with a tenancy under the Housing

(Scotland) Act 1988 (“**1988 Act**”). The application was made in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended, (“**2017 Regulations**”). More specifically, the application was made in terms of rule 70 (*Application for civil proceedings in relation to an assured tenancy under the 1988 Act*) of the HPC Rules.

2. A case management discussion had been held on 30 November 2018 (“**the CMD**”), in respect of which “Notes on a Case Management Discussion” (“**the CMD Notes**”) were issued by the legal member, Susanne Tanner QC (“**the CMD Legal Member**”). A copy of the CMD Notes had been sent to each party by the Tribunal by letter dated 10 December 2018. The CMD Notes narrated that both parties confirmed that they were available for the Hearing and that they had been notified (by letter issued by the tribunal clerk at the CMD) of the date, time and place of the Hearing.
3. The CMD Legal Member also instructed (and recorded in the CMD Notes) that:
  - a. “Both parties must lodge a list of any documents to which they wish to refer, together with copies of the numbered documents, by posting or emailing the list and documents to the tribunal’s administration no later than 5pm on 14 January 2019”; and
  - b. “Both parties must lodge a list of any witnesses they wish to call at the Hearing by posting or emailing the list to the tribunal’s administration to arrive no later than 5pm on 14 January 2019; and parties must make their own arrangements for those witnesses to attend at the hearing”.
4. In addition to the Applicant’s application paperwork which was available to the CMD Legal Member prior to the CMD, the Applicant’s Representatives sought to submit “further information dated 16<sup>th</sup> January 2019”, namely an “Inventory of Productions for the Applicant”, together with copies of the documents referred to in the inventory (“**Additional Information**”). The Applicant’s Representatives were informed by the Tribunal administration team (by letter dated 18 January 2019) that “since the paperwork has been lodged late, the tribunal will not automatically consider this information. The tribunal may wish to know the reason for the late submission.”
5. The Respondents did not provide written representations, any list of documents or any list of witnesses either prior to the CMD or prior to the Hearing.

## **PROCEEDINGS**

6. As a preliminary issue, Ms Thomson of the Applicant’s Representatives was asked to explain why the Additional Information had been submitted late. She explained that repeated requests had been made to Martin & Co, the Applicant’s letting agent, for the documentation but it was not provided. The Applicant’s Representatives escalated the matter to the managing director who indicated that

it was not possible to access the documentation as it was on Ms Khan's system and she was in hospital. Ms Thomson explained that the Additional Information was submitted as quickly as possible after receipt.

7. Both Ms Thomson and Ms Khan confirmed that there had not been any contact from the Respondents since the CMD.
8. Ms Thomson confirmed that the Applicant was seeking an order for payment of £2,299.
9. Ms Khan explained the process and system which Martin & Co. had for recording repairs. She was unable to provide any specific details of what wants of repair were reported or when. She explained that, initially, the Respondents indicated that they were withholding rent because of repair issues but that, after the Applicant had produced the report from Wise Property Care (regarding the incidence and cause mould in the Property), they changed their position and indicated that they could not afford the rent. A payment plan, whereby the Respondents would pay £700 every 4 weeks, was suggested by the Respondents and agreed to by the Applicant but was not complied with by the Respondents.
10. The report from Wise Property Care in the "TREATMENT RECOMMENDED" section stated: "No treatment is required to be carried out by Wise Property Care Ltd at this time, on the basis of this inspection."
11. Ms Thomson submitted that, as set out in the CMD Note, the Respondents did not appear to dispute that the amount set out in the rent statement would have been correct had they not had issues regarding repairs.
12. She also submitted that the Respondents had been given opportunities to provide evidence that they were justified in their position to withhold rent but had not provided any evidence to prove this.
13. Ms Thomson submitted that the reason why the Respondents did not pay their rent was as a result of affordability issues rather than repair issues.
14. Ms Thomson confirmed that the only difference between the rent statement included with the original application paperwork (and so which was available at the CMD) and the rent statement provided as part of the Additional Information ("**Updated Rent Statement**") was that the latter recorded that the Applicant had received the rent deposit amount from the tenancy deposit scheme and so the Updated Rent Statement stated a lower outstanding amount.

## **FINDINGS IN FACT**

15. The Respondents had not made an application to the Tribunal regarding any failure on the part of the Applicant to comply with the repairing standard.

16. The Respondents had not been present at the Hearing, nor had they advised the Tribunal that they would not be attending the Hearing.
17. The Respondents had not provided any evidence to substantiate the claims made by them at the CMD that they were withholding rent because they considered that there were wants of repair. It was not recorded in the CMD Note that the Respondents had paid the "withheld" amounts into a separate account and so it was assumed by the Tribunal that they had not done so.
18. The report from Wise Property Care related to a survey carried out on 31 October 2017 and so indicated that the alleged repair issue relating to the existence of mould in the Property had been raised by the Respondents prior to 31 October 2017.
19. Given that the Updated Rent Statement showed that only £9 was owed by the Respondents to the Applicant as at 29 July 2017 and again as at 19 December 2017, the Tribunal was not satisfied, on the balance of probabilities, that the Respondents were withholding rent on the basis that there were wants of repair.
20. The Tribunal made no finding as to whether or not it would have been appropriate for the Respondents to have withheld any rent had any of the alleged wants of repair existed.
21. The Tribunal found, on the balance of probabilities, that the Respondents had not paid their rent in full because of affordability issues.

## **REASONS FOR DECISION**

22. The tenancy agreement narrated that rent at the rate of £565 per month was payable in advance on the 28<sup>th</sup> of each month. The Updated Rent Statement reflected this.
23. The CMD Note (at paragraph 2.28) recorded the following:

“The tribunal chair asked the Respondents if now that they have seen...the rent statement, whether they accepted that it accurately reflected all of the payments they made. The Respondents said that it shows the correct payments made by them and also shows the correct rent charges that would have been due to be paid by them each month but they are contesting that some or all of them are due because of the problems with repairs.”
24. The Tribunal was satisfied, on the balance of probabilities, that the amount of £2,299 was outstanding and payable by the Respondents to the Applicant in respect of the period to 27 July 2018, the date on which the Respondents had confirmed at the CMD (as per paragraph 2.21 of the CMD Note) that they had moved out of the Property.

## DECISION

25. The Tribunal decided that an order be granted against the Respondents for payment of the sum of £2,299 (two thousand two hundred and ninety-nine pounds) sterling.

### Right of Appeal

In terms of Section 46 of the Tribunals (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.

Pamela Woodman

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Chair

21.1.19  
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Date