

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/18/0926

Re: Property at 47 Livingston Drive, East Kilbride, G75 0EL ("the Property")

Parties:

Mrs Milly Otoo, 40 Strathallan Avenue, East Kilbride, G75 8GX ("the Applicant")

**Miss Alanna Black, Mr Paul West, 47 Livingston Drive, East Kilbride, G75 0EL
("the Respondents")**

Tribunal Members:

Rory Cowan (Legal Member)

Decision (in absence of the Respondents)

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

- Background

The Applicant sought an order for payment in respect of rent arrears for 47 Livingston Drive, East Kilbride G75 0EL. An application in terms of Rule 70 (Civil Proceedings) was received by the Tribunal on 17 April 2018 (the Application), stating that the sum outstanding at that date was £4,313. The Application also claimed "interest at the rate of 8% percent per annum from the date of service until payment"

A copy of the lease dated 13 November 2015 and a rent statement showing arrears of rent as at 13 March 2018 were lodged with the Application.

The Tribunal fixed a Case Management Discussion (CMD) and this was intimated on the Respondents. The Respondents were advised that written representations required to be submitted by 6th August 2018. The Respondents were also told that they required to attend the CMD and were informed that the Tribunal could make any decision on the Application that could be made at a full hearing if the Tribunal had sufficient information and considered the procedure to have been fair. Despite this,

nothing was received from the Respondents until the Tribunal received written representations on 17 August 2018 (the Late Representations).

- The Hearing

The Hearing took place in the absence of the Respondents. It was clear from the terms of the Late Representations that the first named Respondent was aware of the date and time for the CMD. The Applicant was not present, but was represented by a Chloe Barr from Complete Clarity Solicitors.

In the Late Representations, the first named Respondent indicated that she was no longer in the property (claiming she had been unlawfully evicted on 25 July 2018, harassed by or on behalf of the Applicant) and gave some background, as she saw it, to the underlying tenancy. Various claims about issues of disrepair and the condition of the property were made by the first named Respondent as well as a statement that her "personal independence payment had been stopped last June" and that this "had affected all her benefit payments". Whilst there was a suggestion of some issues of disrepair and the condition of the property, no suggestion was made that there was any retention of rent or that these issues were the reason for non-payment of rent. Indeed, from screen shots of texts dated 25 July 2018 to 1st August 2018 sent by the first named Respondent to the Applicant, it appeared that the first named Respondent acknowledged the existence of rent arrears (the amount was not specified). These screen shots were produced by the Applicant's representative to counter the suggestion that the first named Respondent had been unlawfully evicted.

Beyond the Late Representations, no vouching was provided for the various claims, which contained little or no detail and nothing that constituted a defence to this application was produced.

The Applicant's representative also indicated that she sought interest at the rate of 8 per centum per annum as "judicial interest". No claim for contractual interest was made.

The terms of Section 4 of The Administration of Justice (Scotland) Act 1972 (1972 Act), as amended by the Act of Sederunt (Interest in Sheriff Court Decrees and Extracts) 1993 (1993 Act of Sederunt) apply to Sheriff Court Decrees only. The Tribunal's jurisdiction derives from the terms of section 16 of the Housing (Scotland) Act 2014 (the 2014 Act). The consequential amendments made by schedules 1 and 2 of the 2014 Act do not alter the affect or apply to the 1972 Act or the 1993 Act of Sederunt. The Tribunal does not therefore have the power to make any awards of "judicial interest". That of course would not preclude the Tribunal making any order for payment of any contractual rates of interest applied by way of a tenancy agreement, but no such claim was made in this application.

- Findings in Fact

1. That the Applicant and the Respondents entered into a tenancy agreement on 13 November 2015.

2. That the start date of that tenancy agreement was 13 November 2015 and was for an initial term that expired on 12 May 2016.
3. That after the expiry of the initial term, the lease continued monthly under contractual extensions.
4. That under the lease dated 13 November 2015, the rent payment due was £575 per calendar month.
5. That as at 13 March 2018 the rent was in arrears in the sum of £4,313.
6. That the Applicant obtained possession of the property at 47 Livingston Drive, East Kilbride, G75 0EL as at on or around 25 July 2018.
7. That any liability to pay rent continued until at least on or around 25 July 2018.

- Reasons for Decision

The Tribunal proceeded on the basis of the written documents lodged by the Applicant, as well as the Late Representations and the various screen shots of texts between the Applicant and first named Respondent. They also heard oral submissions from the Applicant's representative.

In terms of the lease between the parties, the Respondents were liable to pay the sum of £575 per calendar month by way of rent to the Applicant. They have not done so and are liable to the Applicant in the sum of £4,313.

- Decision

An order for payment in the sum of £4,313.00 is granted against the Respondents.

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.

Rory Cowan

Legal Member/Chair

Date

22 August 2018