



**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/19/1907

Re: Property at 1F Drumclair Place, Airdrie, ML6 7AP (“the Property”)

Parties:

Mr Anders Fauerskov, 40 Norman Macleod Crescent, Bearsden, G61 3BF (“the Applicant”)

Mr Frank Shields, 1F Drumclair Place, Airdrie, ML6 7AP (“the Respondent”)

Tribunal Members:

Andrew Upton (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent should be ordered to make payment to the Applicant in the sum of EIGHTEEN THOUSAND NINE HUNDRED AND SIXTEEN POUNDS AND SIXTEEN PENCE (£18,916.16) STERLING together with interest thereon at the rate of eight per centum per annum from 7 January 2020 until payment.

FINDINGS IN FACT

1. The Applicant, as owner of the property, was the landlord, and the Respondent the tenant, of the property under and in terms of a succession of tenancy agreements during the period 4 March 2010 until 7 January 2020 (“the Tenancy Period”).
2. Lee-Anne Fauerskov and Peter Carroll were, at various times throughout the Tenancy Period, acting as agents for an undisclosed principal, subsequently disclosed as the Applicant.
3. As at 4 December 2019, the rent arrears amounted to £18,916.16.

FINDINGS IN FACT AND LAW

1. The Respondent was under contractual obligation to make payment to the Applicant of rent throughout the Tenancy Period and failed to make full payment thereof.
2. The Respondent is liable to make payment to the Applicant in the sum of £18,916.16.

STATEMENT OF REASONS

1. This application called before me for a Case Management Discussion on 7 January 2020 together with the grouped application EV/19/1904. The Applicant was represented by Miss Gaughan, solicitor. The Respondent was neither present nor represented.
2. These applications have a sorry procedural history, which includes two previous Case Management Discussions. It is regrettable that it has taken so long for them to be properly determined; particularly where the Respondent has never sought to enter process.
3. The applications were raised in the name of Peter Carroll. At an earlier CMD, it was noted that Mr Carroll was not the owner of the property, nor the registered landlord of the property, though he was named as landlord on the tenancy agreement. It was explained by Miss Gaughan that the property is owned by Anders Fauerskov. The registered landlord is his wife, Lee-Ann Fauerskov. Peter Carroll is the father of Lee-Ann Fauerskov. Mrs Fauerskov has been managing the property, but due to the tenancy situation becoming heated she and her husband agreed that Mr Carroll would take over the management of the property. Against that background, I was moved to amend the application by substituting Anders Fauerskov as Applicant in place of Peter Carroll. That motion was anticipated at the previous CMD, referred to in the CMD Note, and proposed in an email to the Tribunal during the course of December 2019. In the circumstances, I granted that motion.
4. At the previous CMD, it was suggested by the Tribunal that because the application sought payment of sums due under a Short Assured Tenancy and a Private Residential Tenancy, the application should be withdrawn and replaced with two new applications for payment: one under Rule 70 and another under Rule 111. I consider such a course to be wholly unnecessary. The application forms are not in a prescribed form. Rules 70 and 111 do no more than set out what applications require to specify in order to be accepted by the Tribunal. In truth, this application is an application under section 16 of the Housing (Scotland) Act 2014 for payment of sums arising out of a Short Assured Tenancy Agreement and, separately, a Private Residential Tenancy. The application in its current form is sufficient, and I will consider it without requiring further unnecessary delay to the Applicant's prejudice.

5. Thereafter, I was invited to grant decree for payment of the sum of £18,916.16 together with interest at the rate of 8% per annum from today's date until payment. The Application set out the basis for payment. An updated rent account, taking parties up to the December 2019 rent payment, had been lodged at the previous CMD and was again referred to in the CMD Note. This was intimated to the Respondent by the Tribunal. I am satisfied that the Respondent had notice from that intimation that the Applicant was seeking payment of £18,916.16.
6. At the previous CMD, the Legal Member raised the question of whether any part of the sum sought had prescribed under section 6 of the Prescription and Limitation (Scotland) Act 1973. Having reviewed the papers, I am satisfied that none of the sums sought have prescribed. The Application was served on the Respondent on 3 September 2019. Having reviewed the rent statement produced, and applied the payments made throughout the tenancies between the parties to the earliest debts (applying "Clayton's Case" – *Devaynes v Noble* (1816) 35 E.R. 767, at 781), I am satisfied that the sum claimed represents rent arrears accrued after 3 September 2014. That being so, no issue of prescription arises.
7. In all of the circumstances, I was satisfied that the Respondent had been liable to pay rent to the Applicant and had failed to make full payment thereof throughout the tenancy. The sum outstanding is £18,916.16. The Respondent has been afforded multiple opportunities to oppose the grant of the order sought and has failed to avail himself of those (unusually large number of) opportunities. I treated the assertions made in the application as unopposed. I therefore granted the order for payment of £18,916.16 together with interest thereon at the rate of 8% per annum from the date of the order (7 January 2020) until payment.

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.

Andrew Upton

Legal Member/Chair

7 JANUARY 2020

Date