



**Decision 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/22/3539

Re: Property at 7 Mosstower, Eckford, TD5 8LF (“the Property”)

Parties:

The Buccleuch Estate Agents, Estate Office, Bowhill, Selkirk, TD7 5ES (“the Applicant”)

Ms Laura Adele Marsh, 7 Mosstower, Eckford, TD5 8LF (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and David MacIver (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for payment is granted to the amount of £11012.03 (ELEVEN THOUSAND AND TWELVE POUNDS AND THREE PENCE) plus interest at 4% per annum.

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 Applicant is seeking an order for payment of the sum of £11012.03 plus interest at 4% per annum in terms of s16 of the Housing (Scotland) Act 2014.
2. On 1st December 2022, all parties were written to with the date for the Case Management Discussion (“CMD”) of 27th January 2023 at 10am at by teleconferencing. The letter also requested all written representations be submitted by 1st December 2022.

3. On 7th December 2022, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent by letterbox service. This was evidenced by Certificate of Intimation dated 7th December 2022.
4. On 6th January 2023, the Applicant's representative emailed the Housing and Property Chamber intimation the increase of the sum sought to £11012.03.
5. This case should be read in conjunction with FTS/HPC/EV/3538.

Case Management Discussion

6. The Tribunal held a Case Management Discussion ("CMD") on 27th January 2023 at 10am at by teleconferencing. The Applicant was not present but was represented by Mrs Claire Young, Solicitor, TC Young. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Tribunal considered the Application. The Respondent did not make written representations prior to the CMD.
7. Mrs Mullen said that the last contact from the Respondent was on 28th July 2022 to advise that the Respondent was waiting for funding to be put into her account. She noted that she planned to move, buy a car and pay off the rent arrears. The Respondent did not move and did not pay the arrears. Mrs Mullen told the Tribunal from October 2018 the Applicant had sent 6 text messages, 13 letters, 1 email and had made 2 visits to the Property. Mrs Mullen said Universal Credit has been in payment to the Respondent since April 2019 but the Respondent had not made any payments to the to the Applicant. The Applicant then applied for direct payments from Universal Credit. Payments have been made at the rate of £325 per month and £66.98 by arrears direct. There is a shortfall of £98.02 per month. The current arrears are £11177.03. This is equivalent of 22 months of non payment.
8. Mrs Mullen believes that the Respondent is still living in the Property. She wrote to the Respondent on 6th January 2023. This was sent by recorded delivery which was signed for by the Respondent on 7th January 2023.

Findings in Fact

9. The parties entered into a Short Assured Tenancy on 29th January 2008 with until 29th July 2008 then month to month thereafter. An AT5 was signed by both parties on 24th January 2008. The rent payments of £490 are due on the 29th day of each month.
10. The Housing and Property Chamber received an application on 27th September 2022.
11. The Respondent has failed to maintain rent payments and has not contacted the Applicant since 28th July 2022.

12. The arrears have increase from the initial amount sought in the application from £10619.95 to £11012.03.

Reasons for Decision

13. The Respondent has failed to make payment of the rent lawfully due in terms of the lease. A rent account was lodged dated 29th January 2008 to 29th August 2022 which detailed arrears of £10619.95. The Applicant lodged an updated statement to the Tribunal up to 29th December 2022 showing arrears of £11012.03. The Tribunal decided that the Respondent had persistently not paid the rent and was in arrears. As a consequence, the Applicant was entitled to be granted the Order for payment of £11012.03 plus interest of 4% per annum against the Respondent. The rate of interest is as per clause 3 of the lease.

Decision

14. The Applicant is entitled to an order of payment of £11012.03 plus interest of 4% per annum by the Respondent. The Order was granted 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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

Gabrielle Miller

27th January 2023

Legal Member/Chair

Date

