



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 16 Housing (Scotland) Act  
2014**

**Chamber Ref: FTS/HPC/EV/22/3342**

**Property at 7 Culbard Street, Elgin, Morayshire, IV30 1JT (“the Property”)**

**Parties:**

**Mr Steven Smith, 6 Tudor Court, Caergeiliog, Holyhead, Gwynedd, LL65 3LL  
 (“the Applicant”)**

**Mr Adam Krajewski, 7 Culbard Street, Elgin, Morayshire, IV30 1JT (“the  
 Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member) and Sandra Brydon (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
 Tribunal”) determined that an order for payment of the sum of £1850 should be  
 granted against the Respondent in favour of the Applicant.**

**Background**

- 1. The Applicant seeks a payment order in relation to unpaid rent. A short assured tenancy agreement, supplementary agreement, AT5 notice, and rent statement were lodged in support of the application.**
- 2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer. Both parties were advised that a Case Management Discussion (“CMD”) would take place on 24 January 2023 at 10am and that they were required to participate. Both were provided with a telephone number and passcode. Prior to the CMD the Applicant lodged an updated rent statement. The Respondent lodged written submissions which stated that the rent arrears had arisen during the pandemic because of health**

issues which affected employment and caused financial problems. Alternative accommodation has been secured and the keys for the property would be returned at the end of January.

3. The CMD took place by telephone conference call on 24 January 2023 at 10am. A related application for an order for possession of the property was also discussed. The Applicant was represented by Ms Matthew, trainee solicitor. The Respondent participated, accompanied by his partner, and represented by Ms Hayward. An interpreter was also present.

### **Case Management discussion**

4. Ms Hayward told the Tribunal that the Respondent moved into his new accommodation on 20 January 2023 and intended to return the keys for the property on 27 January 2023, after the property has been cleaned. She stated that the Respondent accepts that the sum of £1850 is owed and that he consents to an order for payment being granted. He intends to seek a time to pay order in due course but is still receiving money advice so is not able to submit an application at this stage.
5. Ms Matthew told the Tribunal that an order for payment is sought with interest at the rate of 3% above the base rate. She referred the Tribunal to the application form which states that interest is sought on the principal sum and to clause 2.2 of the tenancy agreement which states that the Landlord reserves the right to charge interest at 3% over the base rate on late payments. She invited the Tribunal to award interest at this rate because the Respondent had had advance notice of the request and had agreed to the terms of the tenancy agreement.
6. Ms Hayward advised the Tribunal that the request for interest to be applied is opposed. She asked the Tribunal to consider the Respondent's financial circumstances. She also referred to the tenancy deposit paid by the Respondent which could be applied to the principal sum if recovered by the Applicant.

### **Findings in Fact**

7. The Applicant is the owner and landlord of the property.
8. The Respondent is the tenant of the property in terms of a short assured tenancy agreement.
9. The Respondent has been in arrears of rent since October 2021 and currently owes the sum of £1850 in unpaid rent.

## **Reasons for Decision**

10. The application was submitted with a short assured tenancy agreement, supplementary agreement and AT5 Notice. In terms of the tenancy, the Respondent is due to pay rent at the rate of £625 per month. The Respondent has been in arrears of rent since October 2021. He has recently started making payments to the arrears, which have reduced to £1850. The Applicant is entitled to a payment order for the sum of £1850.
11. Rule 41A(1) of the Tribunal Procedure Rules 2017 states that the Tribunal “may include interest when making an order for payment”. Subsection (2) states that the interest to be applied is to be either “(a) stated in the relevant tenancy agreement, or (b) ordered by the First-tier Tribunal, and running from the date of the decision of the.” Tribunal. Interest is at the discretion of the Tribunal. The Tribunal considered the arguments put forward by both parties and concluded that the Applicant is entitled to have interest applied to the principal sum, but that this should be at a lower rate than requested by the Applicant. In reaching this decision, the Tribunal had regard to the Respondent’s financial circumstances, the recent efforts to address the arrears, the terms of the tenancy agreement and the fact that the application form only refers to interest, not to a specific rate of interest. The Tribunal is satisfied that interest at the rate of 3% should be included in the order.

## **Decision**

12. The Tribunal determines that an order for payment of the sum of £1850 with interest at the rate of 3% should be 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.**

**Josephine Bonnar, Legal Member**

**24 January 2023**