



**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/21/0859

Re: Property at 24 Daff Avenue, Inverkip, PA16 0AP (“the Property”)

Parties:

Mr William Gibson, 17 Aberdour Place, Inverkip, Greenock (“the Applicant”)

**Ms Colleen Erskine, Flat 14 Cameron Court, Cloch Road, Gourock, PA19 1AP
 (“the Respondent”)**

Tribunal Members:

Lesley Johnston (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Order for Payment in the sum of £1,900 together with interest from 16 October 2018 at the rate of 4 % per annum above the Bank of Scotland base rate from time to time, until payment.

Background

1. By application dated 8 April 2021 William Gibson (‘the Applicant’) applied to the Tribunal for an Order for Payment against Colleen Erskine (‘the Respondent’) in respect of the property 24 Daff Avenue, Inverkip, PA16 0AP (‘the Property’).
2. The application is made in terms of Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 (‘the Rules’).
3. The application is made in respect of an assured tenancy entered into between the parties in August 2017 and commencing on 11 September 2017 (‘the lease’).

4. The Applicant lodged the following documents with the application:
 - i. Copy signed lease (undated) with a date of entry dated 11 September 2017;
 - ii. Rent Statement prepared by the Applicant;
 - iii. Redacted bank statements dated from 18 October 2017 to 18 July 2018.

The Case Management Discussion

5. A Case Management Discussion was held by telephone on 21 July 2021 at 10am.
6. The Applicant was represented by Mr Rodgers, Solicitor of Thompsons Solicitors.
7. The Respondent was neither present nor represented. Notice of the hearing and the application was served on the Respondent by Sheriff Officers on 14 June 2021. The documents were left in the hands of her son who confirmed that she resided within the property.
8. The Tribunal was therefore satisfied that notice of the hearing had been effectively given to the Respondent in terms of Rule 24 and was content to proceed with the hearing in the absence of the Respondent in terms of Rule 29.

Submissions for the Applicant

9. Mr Rodgers submitted that the parties entered into a lease in August 2017 in terms of which the date of entry was stated to be 11 September 2017. The rent due in terms of the lease was £650 per calendar month payable in advance and commencing on the date of entry and on the 1st day of each month thereafter.
10. The Respondent had made sporadic payments throughout the duration of the tenancy, as demonstrated by the Rent Statement lodged with the application. The Respondent had fallen in and out of rent arrears from the commencement of the tenancy until 16 January 2018. From 1 February 2018 the Respondent had been in continual arrears.
11. The Respondent left the property on 31 August 2018 following the Applicant's service of a Notice to Quit. The lease came to an end on 31 August 2018. At the end of the lease, the total sum of £1,900 was outstanding.
12. The Applicant (via his representatives) has made a number of attempts to obtain payment from the Respondent before raising proceedings with the Tribunal. Mr Rogers submitted that the letters demanding payment were issued on 10 January 2019; 6 February 2019; 18 April 2019; 16 May 2019; 19 June 2019 and 21 February 2020. Despite those letters, no payment had been made. Between the period 21 February 2020 and the lodging of this application, the Applicant had been ingathering the evidence to support his application (for example the bank statements), obtaining funding for his legal costs in respect of the application and providing instructions to solicitors.

13. Mr Rodgers moved the Tribunal to grant the application for payment of £1,900 together with interest at the rate of 4% per annum above the base rate. A claim for interest was competent in terms of clause 5(a) of the lease between the parties.

Findings in Fact

1. In August 2017 the parties entered into an assured tenancy in respect of the property;
2. The Respondent was the tenant at the property from 11 September 2017 until 31 August 2018;
3. The rent due to be paid in respect of the property was £650 payable monthly in advance on the 1st day of each month;
4. The Respondent was in rent arrears from 11 September 2017 to 5 January 2018.
5. The arrears from 11 September 2017 to 5 January 2018 were cleared on 16 January 2018;
6. From 1 February 2018 the Respondent fell into rent arrears;
7. The Respondent removed from the property on 31 August 2018 at which point the rent arrears were in the sum of £2,550
8. The tenancy deposit in the sum of £650 was appointed to the rent arrears on 16 October 2018;
9. As at 16 October 2018 the rent arrears owed by the Respondent totalled £1,900.
10. As at the date of the application the Tribunal, the rent arrears owed by the Respondent totalled £1,900.

Reasons for Decision

14. The Tribunal was satisfied that the application complied with the formal requirements of rule 70.
15. The Tribunal was satisfied that on the basis of the Rent Statement dated to 16 October 2018, the level of rent arrears to be paid by the Respondent to the Applicant is £1,900.
16. The Applicant has made attempts to recover the rent arrears without recourse to legal proceedings, with no success.
17. Based on the information before the Tribunal, it was satisfied that the Respondent was liable to make payment for the rent in respect of the property and that rent arrears had accrued from 1 February 2018 to 16 October 2018 in the sum of £1,900.
18. The Tribunal also considered whether the Applicant's claim for interest in terms of the lease should be granted. Clause 5(a) of the lease states that the Respondent bound herself to:

“pay the rent at the time and in the manner stipulated and if the rent or any other sums due in terms hereof shall remain unpaid for seven days after becoming payable will pay interest on such sums or the balance thereof from the date or dates when the same fell due until payment at the rate of four centum per annum above the base rate from time to time of the Bank of Scotland.”

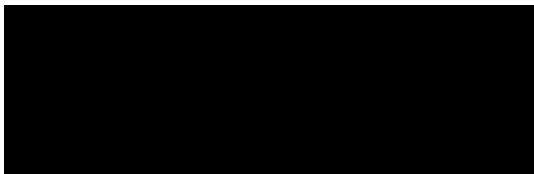
19. The Tribunal was satisfied that the lease provided for contractual interest at 4% above base from the date on which the rent became due until payment. The Respondent had signed the lease containing the provision for contractual interest. The Tribunal also took into account the efforts made by the Applicant to obtain payment from the Respondent and the frequency of correspondence issued to the Respondent prior to this application to the Tribunal.
20. In all the circumstances, the Tribunal considered that there was a contractual basis within the lease for a claim for interest on the arrears and that it was reasonable in the circumstances of the case. In terms of the lease, interest began to accrue on the date the rent became due. While arrears began to accrue from 1 February 2018, the Respondent made five payments of rent during the period 1 February 2018 to 20 June 2018. In addition, the tenancy deposit was appointed to the rent arrears on 16 October 2018. The Tribunal does not consider that it would be reasonable to award contractual interest on the full rent arrears in the sum of £1,900 from 1 February 2018, which would present a windfall for the Applicant. However, the Tribunal does consider that it would be reasonable to award interest from the date on which the rent arrears in the sum of £1,900 claimed became due, namely on 16 October 2018. The Tribunal awards interest from that date at the rate of 4% per annum above the Bank of Scotland base rate from time to time until payment.

Decision

The Tribunal accordingly grants an Order for Payment in the sum of £1,900 together with interest from 16 October 2018 at the rate of 4 % per annum above the Bank of Scotland base rate from time to time 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.



Legal Member/Chair

21 July 2021

Date