



**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/22/1372

Re: Property at 9 Dunure Place, Kilmarnock, KA3 6FN (“the Property”)

Parties:

**Mr Simon MacKay, C/O Ayr Estate and Letting Agents, 2 Parkhouse Street, Ayr,
KA7 2HH (“the Applicant”)**

Mr George Madden, 9 Dunure Place, Kilmarnock, KA3 6FN (“the Respondent”)

Tribunal Members:

Jim Bauld (Legal Member) and Eileen Shand (Ordinary Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order should be granted for payment in the sum
of FOUR THOUSAND SIX HUNDRED AND FIFTY POUNDS (£4,650)**

Background

1. By application dated 10 May 2022, the applicant sought an order under section 16 of the Housing (Scotland) Act 2014 (“the Act”) and in terms of rule 70 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. On 8 September 2022 the application was accepted by the tribunal and referred for determination by the tribunal.
2. A Case Management Discussion was set to take place on 18 November 2022 and appropriate intimation of that hearing was given to both the landlord and the tenant . This application was heard simultaneously with a separate application for an eviction order under case reference number FTS/HPC/EV/22/1371

The Case Management Discussion

3. The Case Management Discussion (CMD) took place on 18 November 2022. The applicant was not personally present but was represented by his agent, Mr Alan Lavelle from Ayr Estate and Letting Agents, 2 Parkhouse Street, Ayr KA7 2HH. The Respondent did not attend.
4. The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters
5. The tribunal asked various questions of the landlord's agent with regard to the application and the extent of the rent arrears owed by the tenant.
6. Mr Lavelle indicated that there have been no payments made since the application was lodged. He confirmed that he had recently met with the respondent when he was conducting a viewing of another property for a female applicant and Mr Madden was also present. Mr Lavelle indicated that Mr Madden said funds in relation to the arrears for this property were being held in a solicitor's account and would be released. Mr Lavelle has had no contact from any solicitor nor has any payment been made.
7. Mr Lavelle asked for a payment order to be made and asked if the tribunal would allow the sum claimed to be increased from £4,650 to reflect the current arrears of £9,900

Findings in Fact

8. The Applicant and the respondent as respectively the landlord and the tenant entered into a tenancy of the property by an agreement dated 4 and 8 June 2017.
9. The tenancy was initially a joint tenancy including Miss Lyndsey Higgins as a joint tenant. She removed from the property a number of years ago and the tenancy has continued with the respondent as sole tenant.
10. The tenancy was a short assured tenancy in terms of the Housing (Scotland) Act 1988
11. The tenant was initially obliged to pay rent of £700 per month. Payments of monthly rent were due on or before the 5th of each month. The rent was increased to £750 per month with effect from 8 October 2021
12. The tenant had accrued rent arrears at the date of the application of £4,650.
13. At the date of the CMD, arrears had increased to £9,900

14. Appropriate accounting had been provided in respect of the outstanding rent with the application to the tribunal.

Reasons for Decision

15. The tribunal accepted the unchallenged evidence of the applicant's agent regarding the outstanding sums. The tribunal noted that the respondent had failed to engage properly with both the applicant and with the tribunal despite having ample opportunity to do so.

16. The tribunal was not willing to allow the sum claimed to be amended. No intimation of such amendment had been made in terms of rule 14A of the tribunal's rules

17. The tribunal also exercised the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD.

Decision

The order for payment of the sum of £4,650 is granted

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.

Jim Bauld

21/11/2022

Legal Member/Chair

Date