



**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/22/3260

**Re: Property at Garlogie House, Garlogie, Westhill, Aberdeenshire, AB32 6SA
("the Property")**

Parties:

**The Dickinson Trust Limited, Dunecht Estates Office, Dunecht, Westhill, AB32
7AW ("the Applicant")**

**Mr Andrew Dingwall-Fordyce, Garlogie House, Garlogie, Westhill,
Aberdeenshire, AB32 6SA ("the Respondent")**

Tribunal Members:

Neil Kinnear (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that**

Background

This was an application for a payment order dated 7th September 2022 and brought in terms of Rule 70 (Application for civil proceedings in relation to an assured tenancy under the 1988 Act) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant originally sought payment of arrears in rental payments in relation to the Property from the Respondent of £33,050.00, and provided with its application copies of a short assured tenancy agreement and a rent arrears statement.

The short assured tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 26th January 2023, and the Tribunal was provided with the execution of service.

In advance of the Case Management Discussion, the Respondent submitted a time to pay direction application, which was opposed by the Applicant.

Case Management Discussion

A Case Management Discussion was held at 10:00 on 6th March 2023 by Tele-Conference. The Applicant's Mrs Telfer participated, and was not represented. The Respondent participated, and was not represented.

Mrs Telfer requested to amend the Tribunal Rule number under which this application was brought from Rule 111 to Rule 70, and also the sum claimed in the application to the figure of £41,800.00 in terms of Rule 14A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, and sought the Tribunal's permission to shorten the 14 day period for intimation of the amendment upon the Respondent in advance of today's Case Management Discussion in terms of Rule 16A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Respondent did not oppose those requests, and the Tribunal considered in all the circumstances that it would consent to the amendments, and shortened the 14 day period of intimation to the Respondent to intimation at the Case Management Discussion.

The Tribunal was invited by Mrs Telfer with reference to the application and papers to grant an order for payment of the sum of £41,800.00.

The Respondent did not oppose the granting of the order sought, and confirmed that he could not seek a time to pay direction in circumstances where he could not currently make any offer to pay in instalments as he had no money or income with which to do so. He explained that he had suffered business difficulties which resulted in him having little income, but hoped in due course to resolve those and repay the rent arrears.

Statement of Reasons

Section 16 of the *Housing (Scotland) Act 2014* provides as follows:

“16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3) Part 1 of schedule 1 makes minor and consequential amendments.”

Accordingly, the Tribunal has jurisdiction in relation to claims by a landlord (such as the Applicant) for payment of unpaid rental against a tenant (such as the Respondent) under a short assured tenancy such as this.

The Tribunal considered the terms of the short assured tenancy agreement, the rent arrears statement, and Mrs Telfer’s submissions, and was satisfied that this disclosed an outstanding balance due by the Respondent to the Applicant in respect of rent arrears of £41,800.00 as sought. The monthly rental due in terms of clause 4.1 of the tenancy agreement is £1,750.00 per month. Accordingly, the Tribunal made an order for payment of the sum sought.

Decision

In these circumstances, the Tribunal made an order for payment by the Respondent to the Applicant of the sum of £41,800.00.

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.

Neil Kinnear

Legal Member/Chair

06 March 2023
Date