



**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/23/3525**

**Re: Property at 56 Cuiken Terrace, Penicuik, EH26 0DU (“the Property”)**

**Parties:**

**Ms Claire Burnet, Kilmartin Cottage, Woodhouselee, Penicuik, EH26 0PF (“the Applicant”)**

**Mr Stuart Brian Elliot, 56 Cuiken Terrace, Penicuik, EH26 0DU and Mr Paul Ryan, 26 Dean Park, Balerno, EH14 7ED (“the Respondents”)**

**Tribunal Member:**

**George Clark (Legal Member)**

**Decision (in absence of the First-named Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and made an Order for payment by the Respondents to the Applicant of the sum of £8,578.80, with interest on £6,245 thereof at the rate of 8% per annum from the date of its Decision, until payment.**

**Background**

1. By application, received by the Tribunal on 4 October 2023, the Applicant sought an Order for Payment in respect of unpaid rent that had become lawfully due by the Respondent to the Applicant. The sum sought was £3,860. The Applicant was also seeking interest on that sum at the rate of 8% per annum from the date that each instalment of rent fell due for payment and the reasonable costs of the Applicant.
2. The application was accompanied by a copy of a Private Rented Tenancy Agreement between the Parties commencing on 24 June 2022 at a monthly rent of £795, and a Rent Statement showing arrears as at 23 September 2023 of £3,860. The Applicant’s solicitors also provided copies of two letters, dated 1 and 10 February 2023, to the Second-named Respondent, advising him that the rent was in arrears to the extent of £1,685 and demanding payment of that

sum, as Guarantor under the Tenancy Agreement. The Tenancy Agreement contains a Guarantee by the Second-named Respondent for “*all payments of rent...and any other payments due to the Landlord which the Tenant is required to pay under this Agreement*”. Clause 37 of the Tenancy Agreement provides that “*All payments (including payments of rent in particular but without prejudice to the generality) due to the Landlord under or by virtue of this Agreement shall bear interest at the annual rate of eight percent from the respective dates on which they become due until payment.*” The same Clause also states that “*The Tenant agrees to...meet all reasonable fees and outlays incurred by the Landlord including legal fees in pursuing payment from the Tenant of any arrears of rent or other charges or outlays payable under this Agreement or pursuing any other remedial or enforcement action as a result of the breach by the Tenant of his obligations under this Agreement.*”

3. On 8 November 2023, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 29 November 2023. The First-named Respondent did not make any written representations to the Tribunal.
4. On 24 November 2023, the Second-named Respondent made written representations. He stated that, when he received the payment demand in February 2023, the First-named Respondent had assured him that the arrears would be cleared and that he had spoken with the landlord and her solicitors, and all was OK. He had followed this up with the First-named Respondent on many occasions and had been assured consistently that the rent was being paid from Universal Credit and arrears cleared, so, from February until 9 November 2023 (when he received a copy of the application and the case papers), he had assumed there was no problem. He was a man of his word and would pay what is due, but he asked that he should only pay the rent arrears and not added interest or additional costs.
5. On 8 December 2023, the Applicant’s solicitors sought leave to amend the application to increase the amount sought. They provided a Rent Statement showing arrears as at 24 November 2023 of £5,450 and wished that sum to be increased to £6,245 if the First-named Respondent failed to pay the rent which would fall due on 24 December 2023, before the Case Management Discussion was due to take place. They also made a formal application to recover the reasonable costs occasioned by the failure to pay rent and provided copy Invoices totalling £2,333.80. Accordingly, the amended application was for an Order for Payment of either £7,783.80 (£5,450 rent arrears plus reasonable costs of £2,333.80) plus interest or £8,578.80 (£6,245 rent arrears plus reasonable costs of £2,333.80) plus interest.

### **Case Management Discussion**

6. A Case Management Discussion was held by means of a telephone conference call on the morning of 11 January 2024. The Applicant was represented by Mr David Gray of Gilson Gray LLP, Edinburgh. The First-named Respondent was not present or represented. The Second-named Respondent was present.

7. The Applicant's representative told the Tribunal that the rent arrears are now £6,245. An application for an Eviction Order had been made on 17 July 2023 and, at a Case Management Discussion on 21 November 2023, an Eviction Order had been issued, but, due to current Scottish Government restrictions imposed by the Cost Of Living (Tenant Protection)(Scotland) Act 2022, which came into force on 28 October 2022, it cannot be enforced until after 31 March 2024 and perhaps not before 21 May 2024, which will be 6 months after the date of the Order. Questioned by the Tribunal, Mr Gray confirmed that no letters demanding payment had been sent to the Second-named Respondent after 10 February 2023. He explained some of the details in the various fee notes to be regarded as reasonable costs, including those relating to the eviction process rather than the present application. They were, he contended still recoverable under Clause 37 of the Tenancy Agreement, because they would not have arisen if the First-named Respondent had paid the rent timeously.
8. The Second-named Respondent told the Tribunal that the First-named Respondent had been a tenant of his and that, as he had had no issues with him, he had agreed to be the Guarantor in respect of his tenancy of the Property. He had received regular assurances from the First-named Respondent after receiving the letters in February 2023 and, until he received the case papers in November, he was unaware that the First-named Respondent had been lying to him. He had had no communication from the Applicant or her solicitors between February and November. He reiterated that he accepted that he was liable to pay the rent arrears, but he was very concerned about having to pay interest and legal fees and was particularly worried by the fact that his liability could increase by £795 per month until the First-named Respondent could be evicted. This could cost him more than £3,000. He accepted that he could not be removed as a Guarantor unless the Applicant agreed. He told the Tribunal that his enquiries led him to believe that he would never recover from the First-named Respondent any of the money he was required to pay.
9. Mr Gray said that sheriff officers have been instructed to serve a charge on the First-named Applicant on 1 April 2024, the earliest possible date, and that, at present, he had no instructions to pursue Mr Ryan as Guarantor for rent arrears between now and the date of the eviction.

### **Reasons for Decision**

10. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation to enable it to decide the application without a Hearing and that it appeared that the Parties had provided all the information and documentation they wished the Tribunal to consider in arriving at its Decision.
11. The Tribunal accepted the amendment to the application to increase the rent arrears sought to £6,245.

12. The Tribunal noted that the interest provision in the Tenancy Agreement had never been invoked by the Applicant. The rent account had never been debited with an interest element and the letters to the Second-named Respondent, as Guarantor, made no mention of interest being added to the principal sum due. The Tribunal decided, therefore, that it would not make an award of interest for the period prior to the date of its Decision, but that the interest provision in the Tenancy Agreement would apply to the outstanding rent of £6,245 from the date of its Decision.
13. The Tribunal accepted that the fee notes from Gilson Gray totalling £2,333.80 were reasonable costs incurred by the Applicant in respect of the First-named Respondent, but noted that the Second-named Respondent had not been contacted after 10 February as the rent arrears increased, and that the letters to him of 1 and 10 February 2023 did not specifically alert him to the fact that, if he did not pay the principal sum demanded of him, he would become liable, as Guarantor, for the whole legal costs of any proceedings, including those for eviction. The letters only told him, in general terms, that he would be liable for rent and any other payments due to the Applicant which the First-named Respondent was required to pay under the Tenancy Agreement. Had he been given clearer notice of his potential liabilities by, for example, being told as and when fee notes for legal work were issued, he would at least have had the opportunity to restrict his losses. The Tribunal, however, has to make an Order against the First-named Respondent for the whole sum sought and, consequently, the Order is also enforceable against the Second-named Respondent, as Guarantor. The Tribunal hopes, however, that the Applicant will reflect on the Tribunal's concerns regarding the letters of 1 and 10 February 2023, when determining whether to enforce the Order to its full extent against the Second-named Respondent.
14. The Tribunal accepted that the Tenancy Agreement makes provision for interest on unpaid rent, but was not prepared to include in the Order interest on the legal fees, as payment of these was the responsibility of the Applicant, with a right of recovery against the Respondents.

## **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.**



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**Legal Member**

**11 January 2024**  
**Date**