



**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 (“the 2014 Act”) and Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”)**

**Chamber Ref: CV/23/4402**

**Re: Property at 6 Whinny Brae, Broughty Ferry, Dundee, DD5 2HW (“the Property”)**

**Parties:**

**Mrs Nadia Sutherland, 18A Douglas Terrace, Broughty Ferry, Dundee, DD5 1EA (“the Applicant”)**

**Gilson Gray LLP, 29 Rutland Square, Edinburgh, EH1 2BW (“the Applicant’s Representative”)**

**Mr Jason Kevin Kelly, 6 Whinny Brae, Broughty Ferry, Dundee, DD5 2HW (“the Respondent”)**

**Tribunal Members:**

**Ms Susanne Tanner KC (Legal Member) and Mrs Elizabeth Dickson (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that the Respondent should pay to the Applicant:**

- (1) the sum of SEVEN THOUSAND AND SIXTY THREE POUNDS AND FORTY NINE PENCE (£7,063.49) STERLING;**
- (2) contractual interest at the rate of 2.5 per cent above the base rate of the Bank of England on each instalment of rent from the date it fell due until the date of payment; and**
- (3) contractual costs in the sum of NINE HUNDRED POUNDS (£900.00) STERLING;**

**and made an Order for Payment in respect of the said sums.**

**The decision of the tribunal was unanimous.**

## Statement of Reasons

1. On 8 December 2023, the Applicant's Representative made an Application seeking payment of rent arrears of £2,685.99 from the Respondent, plus contractual interest at 2.5% above Bank of England base rate from the date of each instalment as it fell due, together with contractual costs of £1958.83. Supporting evidence was produced.
2. On 18 March 2024, the Applicant's Representative made an application to amend the principal sum sought to £6,187.99 and produced an updated rent statement. Notice was given that if the rent due on 1 April 2024 was not paid by the Respondent, the sum sought would be amended to £7,063.49.
3. The tribunal allowed amendment of the principal sum claimed to £6,187.99.
4. No written representations were submitted by the Respondent in advance of the CMD.
5. A Case Management Discussion (CMD) took place on 3 April 2024. A CMD in a related eviction application involving the same parties (EV/24/0163) also took place today.
6. The Applicant's Representative attended both CMDs on behalf of the Applicant.
7. The Respondent did not attend the CMDs. He made no contact with the tribunal after service of the Application paperwork in each case on 26 February 2024 and did not state any defence to the civil Application.
8. The tribunal decided to proceed with the civil Application in the absence of the Respondent. The tribunal was satisfied that the requirements of rule 24(1) of the 2017 Rules regarding the giving of notice of a CMD had been duly complied with and proceeded with the Application upon the representations of the party present and all the material before it.
9. The tribunal heard from Ms Gray in relation to the Application. He made an application to amend the principal sum claimed to £7063.49 and stated that the rent due on 1 April 2024 had not been paid. He relied on the rental statement produced to the tribunal in advance of the CMD.
10. Mr Gray stated that he was seeking a payment order for £7063.49, together with contractual interest and costs.
11. Mr Gray stated that the rent had originally been £850.00 per calendar month and had increased to £875.50 per calendar month on 1 September 2023, in terms of a rent increase notice and as shown in the rent statement.
12. Mr Gray sought contractual interest on the rent arrears in terms of paragraph 37 of the Private Residential Tenancy agreement, which provides, "*If rent is 10*

*days overdue then rent will be chargeable from the date it was due until it is paid at a rate of 2.5% over the Bank of England Base Rate”.*

13. Mr Gray sought costs of £1958.83 in terms of paragraph 37 of the Private Residential Tenancy agreement which provides that *“the landlord shall be entitled to pursue the tenant for any reasonable costs incurred as a result of the tenant’s failure to pay rent, including but not limited to .. any reasonable costs incurred in pursuing the tenant for unpaid rent”*. Four invoices were lodged in support of this head of claim, all of which related to paralegal services by the Applicant’s Representative. There was a discussion about the four invoices lodged and Mr Gray accepted that two of them related only to the eviction application. The invoice relating to the application to amend the civil claim and attendance at both CMDs was for £500 plus VAT. Mr Gray stated that this was a fixed fee and would be the same whether he attended one or both CMDs on the same date. One invoice related to preparation of the Form F on behalf of the Application. In total, £900.00 including VAT related to the civil application (including the fee for amendment of the claim and attendance at the CMD); and £1058.83 including VAT related only to the eviction application.
14. There was no defence to the Application, as amended.
15. An eviction order was made by the tribunal in the related eviction application on 3 April 2024.

### **Findings-in-Fact**

16. The Applicant is the registered proprietor of the Property.
17. In terms of a Private Residential Tenancy agreement between the parties in respect of the Property, the start date of the tenancy was 21 November 2019.
18. Rent was payable by the Respondent to the Applicant at the rate of £850.00 per calendar month in advance, from the start of the tenancy until 1 August 2023; and at £875.50 per calendar month, in advance from 1 September 2023 onwards.
19. The rent arrears which accrued until 3 April 2024 amounted to £7063.49.
20. The Respondent has not made any payments to the Applicant in respect of rent arrears since the Application was made.
21. The Respondent’s tenancy was ongoing until 3 April 2024 when an eviction order was made by the tribunal in a related application EV/24/0163.

22. The Applicant incurred £900.00 including VAT of costs in legal services in respect of recovery of the rent arrears.

### **Findings of fact and law**

23. The Respondent is liable to contractual interest on rent arrears from the date that they fall due until payment at the rate of 2.5 per cent above the base Rate of the Bank of England.

24. The Respondent is contractually liable to meet the reasonable costs of the Applicant incurred in recovering rent arrears.

### **Discussion**

25. As the tribunal was satisfied that the Respondent owes £7063.49 to the Respondent by way of rent arrears from the period to 3 April 2024, the tribunal made an Order for Payment of that principal sum.

26. In addition, the tribunal was satisfied that the Respondent is liable to contractual interest on rent arrears from the date that the instalments fall due until payment at the rate of 2.5 per cent above the base rate of the Bank of England and made a payment order on that basis.

27. Further, the Respondent is contractually liable to meet the reasonable costs of the Applicant incurred in recovering rent arrears. In this instance, the tribunal considered that £900.00 including VAT was attributable to the reasonable costs of recovering the rent arrears. This included £600 (including VAT) for the costs of the amendment process and attendance at the CMD. The tribunal accepted that this cost would have remained the same whether or not the Applicant's Representative also attended at the eviction CMD at the same time. The tribunal made an order for payment of £900.00 of contractual costs.

28. The tribunal did not accept that the £1058.83 including VAT of costs was within the definition of costs incurred in the recovery of rent arrears, as they were attributable to the related eviction application and did not make an order for this amount.

### **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.**



**Ms Susanne Tanner KC  
Legal Member/Chair**

**3 April 2024**