



**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/20/1543**

**Re: Property at 51 Links View, Aberdeen, AB24 5RG (“the Property”)**

**Parties:**

**Ms Joanne Moynan, 7A Claremont Crescent, Edinburgh, EH7 4HX (“the Applicant”)**

**Ms Denise Judith Thomas, 51 Links View, Aberdeen, AB24 5RG (“the Respondent”)**

**Tribunal Members:**

**Jim Bauld (Legal Member)**

**Decision**

**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, NINE HUNDRED AND FIFTY POUNDS (£4,950.00) with Interest thereon at the rate of 4.1% per annum running from the date of the decision of the First-tier Tribunal to grant this order, being 16 October 2020 until payment**

**Background**

1. By application dated 21 July 2020, the applicant sought an order for payment under Section 16 of the Housing (Scotland) Act 2014 (“the Act”) and in terms of rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. On 4 September 2020 the application was accepted by the tribunal and referred for determination by the tribunal.

2. A Case Management Discussion (CMD) was set to take place on 16 October 2020 and appropriate intimation of that hearing was given to both parties

### **The Case Management Discussion**

3. The Case Management Discussion (CMD) took place on 16 October 2020 via telephone case conference. The applicant took part in the telephone case conference and was represented by Lisa Campbell from Stonehouse Lettings, 27/30 Carden Place, Aberdeen, AB10 1UP. The Respondent also took part in the telephone case conference.
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 parties with regard to the application.
6. It was not disputed that arrears had started to accrue shortly after the commencement of the tenancy and at the date of the lodging of the application arrears amounted to £4950. Additionally the applicant sought payment in respect of late payment fees totalling £432. The applicant was thus seeking an order for payment of £5382.
7. The tribunal raised with the applicant's representative the question of whether the late payment fees fell within the scope of the provisions of the Consumer Rights Act 2015 and the Unfair Contract Terms guidance issued by the Competition and Markets Authority on 31 July 2015.
8. The tribunal questioned the applicant's representative on this issue and in particular whether the late payment fees charged and the specific terms of the clause in the private residential tenancy agreement between the parties fell within the boundaries of the above guidance. The applicant's representative indicated that the lease has been prepared with the benefit of legal advice and that she presumed that its terms fell within the boundaries of the law and the guidance but that she did not wish to insist upon the order for payment of that part of the claim if that would mean an additional hearing. The applicant herself confirmed those instructions.
9. The claim for the late payment fees was accordingly treated as withdrawn leaving just the rent arrears of £4,950.
10. The respondent conceded that the rent arrears figure was correctly stated.
11. The tribunal then explored with parties whether they were willing to agree a payment arrangement in respect of the agreed amount of rent arrears. The respondent offered to pay at the rate of £150 per month. That would take 33

months to clear the arrears. The applicant indicated she was not willing to accept that offer.

12. The applicants' representative also indicated that they wished interest to be added to the sum claimed based on the amount set out in the private residential tenancy agreement. In the tenancy agreement the landlord was entitled to charge interest at 4% above the Royal Bank Of Scotland base rate. The tribunal noted that the rate of interest.

### **Findings in Fact**

13. The Applicant and her husband Petered Moynan are the registered owners of the property. The applicant and the Respondent as respectively the landlord and tenant entered into a tenancy of the property which commenced on 18 October 2019
14. The tenancy was a private residential tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016
15. The initial agreed monthly rental was £600. The rent increased to £650 per month from 18 April 2020
16. Arrears had started to accrue shortly after the commencement of the tenancy and at the date of the lodging of the application arrears amounted to £4950.
17. The basis for the order for Payment was accordingly established

### **Reasons for decision**

18. The tribunal noted there was no dispute between the parties with regard to the amount of rent arrears being claimed. The tribunal was not willing to grant an order for payment in respect of the late payment fees without being fully addressed on the compliance of these fees with the Consumer Rights Act 2015 and the Unfair Contract Terms guidance issued by the Competition and Markets Authority on 31 July 2015. The applicant and her representative indicated they did not wish to insist upon that aspect of their payment claim.
19. The tribunal explored with the parties the possibility of agreeing a payment arrangement in respect of the outstanding rent arrears. The amount offered by the respondent was not acceptable to the applicant on the basis it would take 33 months to clear the arrears. Given the length of time that the amount offered would take to clear the arrears, the tribunal decided it should not make a time to pay direction but should simply grant the payment order for the sum of £4950.

20. The tribunal noted the claim for interest on the principal sum. The tenancy agreement set out a rate of interest to be charged. The tribunal regarded that rate of interest as being reasonable in all the circumstances and the tribunal was willing to grant the order for payment with interest added at the rate of 4.1% per annum.

### **Decision**

The order for payment of the sum of £4,950 plus interest at the rate of 4.1% per annum 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.**

J Bauld

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**Legal Member/Chair**

16 October 2020  
**Date**