

Housing and Property Chamber
First-tier Tribunal for Scotland



**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/19/2508

The Parties:

EHL Holdings Ltd, 2 Hyndford Grange, Lanark, ML11 8SF; (“the Applicant”)

**Pomphrey’s Properties, 34 Hill Street, Wishaw, ML2 7AT.(“the Applicant’s
Representative”);**

and

**Mrs Leona Hamilton and Miss Niamh Hamilton, both residing at 28 Braxfield
Terrace, Lanark, ML11 9BZ (“the Respondents”)**

Re: Property at 31 Balcastle Crescent, Carluke, ML8 4LG (“The Property”)

Tribunal Member:

G McWilliams- Legal Member

Decision in absence of the Respondent

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

Background

1. This is an Application for a payment order dated 8th August 2019 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 2017 Regulations”).

2. In the Application the Applicant sought payment in respect of arrears in rental payments of £2364.00, damages for the cost of a replacement oven of £399.99, and professional fees incurred by the Applicant to their representative of £1000.
3. The parties' 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.
4. The Respondents had been validly served by Sheriff Officers with the Notification, Application papers and Guidance Notes from the Tribunal on 2nd September 2019 and the Tribunal was provided with the Execution of Service.

Case Management Discussion on 9th October 2019

5. A Case Management Discussion ("CMD") was held on 9th October 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant was represented by Ms A McIntyre of the Applicant's Pomphrey's Properties, 34 Hill Street, Wishaw, ML2 7AT. The Respondents did not appear and were not represented. The CMD was adjourned to allow the Applicant and their representative time to obtain legal advice in respect of various points, which were referred to in the Notes on that CMD dated 9th October 2019.

Case Management Discussion on 13th November 2019

6. Ms McIntyre again attended at today's CMD. The Respondents again did not appear and were not represented. The Tribunal noted that intimation of today's CMD had been given to the Respondents by recorded delivery post on 15th October 2019. At today's CMD the Applicant sought payment in respect of arrears in rental payments of £2364.00, and £98.63, damages for the cost of a replacement oven of £399.99, Sheriff Officers' fees of £239.89 for service of notices and papers in respect of an eviction order granted on 7th May 2019, and professional fees incurred by the Applicant to their representative of £1000. The Applicant had produced supporting papers in respect of the various amounts sought.
7. The Applicant's Representative acknowledged that her email seeking to amend the amounts sought, to include additional arrears in rental payments of £98.63 and Sheriff Officers' fees of £239.89 for service of notices and papers in respect of the previously granted eviction order, had been sent on 5th November 2019. The Tribunal's Office had sent copies of the Representative's email to the Respondents by post on 6th November 2019. The Applicant's Representative acknowledged that the intimation of the application to amend, and crossing over to the Respondents, occurred less than 14 days prior to today's CMD, which was not in compliance with the terms of Rule 14A of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017. She stated that she was unaware of the terms of that Rule. She also acknowledged that it would be helpful if further specification of the basis of the Representative's charging of professional fees

to the Applicant, being the fees of £1000 which the Applicant sought payment of, were to be provided to the Tribunal, and intimated to the Respondents. In the circumstances the Representative asked the Tribunal to grant an order for payment of arrears in rental payments of £2364.00 and damages for the cost of a replacement oven of £399.99, totalling £2763.99, at today's CMD. She submitted that the rental monies were due and that an oven, which was newly installed at the commencement of the parties tenancy agreement in April 2017, had to be replaced at its conclusion as it was damaged and inoperable. The Representative indicated that the Applicant may lodge a separate Application, with further specification, in respect of the additional amounts originally sought at today's Hearing.

Statement of Reasons for Decision

8. 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."

9. Accordingly, the Tribunal now has jurisdiction in relation to claims by landlords (such as the Applicant) for payment of unpaid rental monies and other related costs against tenants (such as the Respondents) under a short assured tenancy.

10. The Tribunal considered the terms of the Short Assured Tenancy agreement and the copy rent arrears Statement and oven photographs and quotation which had been lodged, and was satisfied that these papers established that there were monies due to be paid to the Applicant by the Respondents, at the date of lodging of the Application, in the sum now sought of £2763.99. Accordingly, the Tribunal made an order for payment of the sum sought of £2763.99.

11. The Tribunal did not make any award of expenses. The Respondent had not engaged in the current proceedings and therefore the criteria in Rule 40 in the 2017 Regulations were not satisfied.

Decision

12. Accordingly, the Tribunal makes an order for payment by the Respondent to the Applicant of the sum sought of £2763.99.

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.

G McWilliams

13th November 2019

Legal Member

Date