



**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/19/3210**

**Re: Property at 81 Merryvale Road, Irvine, KA12 8ET (“the Property”)**

**Parties:**

**Mrs Anna Field, 28 Kneller Road, New Malden, Surrey, KT3 5NE (“the Applicant”)**

**Ms Linda Ward, 81 Merryvale Road, Irvine, KA12 8ET (“the Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the Respondent in the sum of £3428.92 with interest thereon at the rate of 3.75% from the date of the decision until payment.**

**Background**

1. By application dated 27 September 2019 the Applicant’s representatives Clarity Simplicity Limited, Solicitors, Glasgow applied to the Tribunal for an order for payment by the Respondent in respect of alleged rent arrears arising from the Respondent’s tenancy of the property. The Applicant’s representatives submitted to the Tribunal a copy of the Tenancy agreement, a rental statement and copy bank statement in support of the application.
2. By Notice of Acceptance dated 23 October 2019 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned.

3. Intimation of the Case Management Discussion was given to the Applicant's representatives by post on 6 November 2019 and to the Respondent by Sheriff Officers on 8 November 2019.
4. The Applicant's representatives submitted an application to amend the sum claimed to the Tribunal by email dated 2 December 2019.

### **The Case Management Discussion**

5. A Case Management Discussion was held at Glasgow Tribunals Centre on 9 December 2019. The Applicant did not attend but was represented by Ms Lauren Dalgliesh of the Applicant's representatives. The Respondent did not attend and was not represented. The Tribunal being satisfied that proper intimation of the Case Management Discussion had been given to the Respondent proceeded in her absence in accordance with Rule 29 of the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Rules").
6. Ms Dalgliesh referred the Tribunal to the terms of the tenancy agreement and confirmed the rent per month was 375.00. She explained that the Respondent had previously been in receipt of Housing Benefit which had over time reduced. The Respondent had failed to pay the shortfall between the benefit paid and the rent due. According to Ms Dalgliesh as at 24 September the Respondent had accrued rent arrears amounting to £3428.92.
7. Ms Dalgliesh referred the Tribunal to her email of 2 December 2019 in which it was said that the rent arrears had increased to £4178.92 as a further two months' rent was due. She asked the Tribunal to allow the sum claimed to be amended to the increased amount.
8. In response to a query from the tribunal Ms Dalgliesh confirmed that the proposed amendment had not been intimated by her to the Respondent only to the Tribunal. She also acknowledged that the amendment had been submitted less than 14 days prior to the Case Management Discussion and therefore not in compliance with Rule 14A of the 2017 Rules. She suggested that the Tribunal should exercise its discretion and allow the amendment in any event.
9. The Tribunal did not consider it would be just or equitable to allow an amendment outwith the time period permitted by Rule 14A. If the Applicant wished to proceed with her amendment then it would be necessary to continue the application to a further Case Management discussion for the Applicant's representatives to intimate the application to the Respondent in accordance with Rule 14A. In the circumstances the Ms Dalgliesh said she had instructions to proceed with the application in the sum originally claimed.
10. She asked the Tribunal to make an order in favour of the Applicant in the sum of £3428.92.

11. Ms Dalgliesh then asked the Tribunal to award interest on the sum claimed at the judicial rate. She acknowledged that the Tenancy Agreement provided for interest on late payment of rent to be applied at 3% above the base rate of the Royal Bank of Scotland which she believed to be 0.75% but that as the tenancy agreement was constituted under English law the Tribunal could award interest at the judicial rate instead.

### **Findings in Fact**

12. The Parties entered into a tenancy agreement for the lease of the property at a rent of £375.00 per month.
13. The Respondent accrued rent arrears amounting to £3428.92 as at 24 September 2019.
14. The Respondent has made no further payments of rent.
15. The contractual rate of interest on late payment of rent in terms of the Tenancy Agreement is 3% above the Base Rate of the Royal Bank of Scotland.

### **Reasons for Decision**

16. The Tribunal was satisfied that the parties entered into a tenancy agreement for the lease of the property to the Respondent at a rent of £375.00 per calendar month.
17. The Tribunal was satisfied from the documents submitted and the oral submissions of Ms Dalgliesh that the Respondent had accrued rent arrears amounting to £3428.92 as at 24 September 2019.
18. The Tribunal did not consider it had the power or that it was appropriate to award interest at the judicial rate. Rule 41A of the 2017 Rules provides that the Tribunal may include interest either at the rate stated in the relevant tenancy agreement or the rate ordered by the Tribunal. In this instance the Tribunal considers it equitable to include interest at the rate stated in the tenancy agreement. As the base rate of the Royal Bank of Scotland is said to be 0.75% the appropriate rate of interest is 3.75% from the date of the decision.

### **Decision**

19. **The tribunal having considered the documents lodged together with the oral submissions finds the Applicant entitled to an order for payment by the Respondent in the sum of £3428.92 with interest thereon at the rate of 3.75% from the date of the Decision until payment.**

## 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.

Graham Harding

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Legal Member/Chair

9 December 2019  
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Date