

**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 Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017**

**Chamber Ref: FTS/HPC/CV/18/1397**

**Re: Property at 49 Warren Road, Hamilton, ML3 7QJ (“the Property”)**

**Parties:**

**Scottish Midland Co-operative Society Ltd, Hillwood House, 2 Harvest Drive, Newbridge, EH28 8QJ (“the Applicant”)**

**Mr Bruce Cunningham, 58 Glen Avenue, Larkhall, ML9 1JL (“the Respondent”)**

**Tribunal Members:**

**Ewan Miller (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to payment of the sum of £1664.90 together with interest thereon as specified in Clause THIRD (B) of the lease between the parties**

**The Applicant’s request for expenses is refused.**

**Background**

The Applicant submitted an application dated 5 June 2018 seeking an order for payment of the sum of £2314.90 from the Respondent together with interest at 8% per annum and expenses.

The Respondent had taken a lease of a property belonging to the Applicant at 49 Warren Road, Hamilton from 16 November 2017 for an initial period of six months. The application alleged that the Respondent had ceased to pay rent around the end of 2017. A “Tenant Account History” was produced by the Applicant to substantiate the figures.

## **Case Management Discussion**

The hearing took place on 17 August 2018. Mr Fraser Cameron of Gilson Gray represented the Applicant. The Respondent was present and accompanied by his father Bruce Cunningham Snr

Mr Cameron set out the details of the lease. He highlighted that the deposit had been recovered from the relevant tenancy deposit scheme and had been used to offset the arrears. The sum sought was now reduced to £1664.90.

Mr Cunningham confirmed that he did not dispute the fact that he had entered in to the lease and that he had failed to make payment of the rent as set out. He had lost his job and had become unemployed. He had now found work and was willing to make monthly payments to clear the sums due. He offered £100 in the course of the hearing.

The parties were not in dispute on any material issue and agreed the sum outstanding. On that basis the Tribunal was satisfied that it was appropriate to make a decision at this point rather than refer the matter to a full hearing.

## **Findings in Fact**

1. The Applicant and Respondent entered in to a tenancy agreement dated 13 and 16 November 2017. The initial period of the tenancy was for 6 months at a monthly rental of £550 per calendar month.
2. The Respondent had failed to make payment of the rent due under the lease
3. The Respondent's deposit had been recovered by the Applicant and used to reduce the sums due to £1664.90 together with the interest due under the lease

## **Reasons for the Decision**

The Tribunal proceeded on the basis of the tenancy and financial documentation before it. There was nothing to indicate that the Applicant's case was incorrect. The Respondent had taken entry and then ceased to make payment of the rent he was contractually obliged to make. The Respondent confirmed at the hearing that the sums were due.

The Tribunal considered the question of interest. The Applicant had sought interest at the judicial rate of 8%. A claim for judicial interest stems from the Administration of Justice (Scotland) Act 1972 Section 4 as amended. However, the Housing (Scotland) Act 2014 does not make reference to these provisions and the Tribunal has no power to award judicial interest. The Tribunal did, however, note that the Applicant was entitled in terms of the lease to interest at 4% over base rate compounded monthly. In the circumstances, given this was a lesser amount than that sought by the Applicant, the Tribunal was content to confirm the principal sum with the contractual interest in addition

The Applicant sought expenses against the Respondent arising from the alleged unreasonable behaviour and conduct of the Respondent.

The Tribunal noted that in terms of Rule 40(1) it may award expenses against a party but only where that party has through unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense. The Tribunal noted the reference in Rule 40(1) that the behaviour must be "in the conduct of a case" as opposed to conduct that then required the need for a party to bring a case (as is the situation in England). The Respondent had not exhibited any unreasonable behaviour in the conduct of the case. Whilst it may have been helpful for the Respondent to engage directly with the Applicant prior to the hearing they were not obliged to do so. They were not acting wilfully in a difficult manner and indeed had behaved perfectly reasonably at the hearing. No behaviour and tactics were being used to frustrate the conduct of the case. Accordingly no expenses were awarded against the Respondent.

### **Decision**

The order for payment in respect of the sum of £1664.90 is granted to the Applicant together with interest to be calculated in accordance with Clause THIRD (B) of the lease between the parties.

The request for expenses by the Applicant against the Respondent is refused.

### **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.**

Ewan Miller

\_\_\_\_\_  
**Legal Member/Chair**

17/7/18  
\_\_\_\_\_  
**Date**