

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 (“2014 Act”)**

**Chamber Ref:** FTS/HPC/CV/18/2717

**Re:** 20D Knockhill Road, Renfrew, PA4 8EF (“the Property”)

**Parties:**

**Mr John McCrae, 31 Kinloch Road, Renfrew, PA4 0RJ (“the Applicant”)**

**Ms Dawn Kerr, 20D Knockhill Road, Renfrew, PA4 8EF (“the Respondent”)**

**Tribunal Members:**

**Pamela Woodman (Legal Member)**

**Present:**

The case management discussion in relation to case reference FTS/HPC/CV/18/2717 took place at 10.00am on Friday 15 February 2019 in room 111, Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT (“**the CMD**”). The Applicant was not present in person at the CMD but was represented by Craig Chisholm (“**Mr Chisholm**”), trainee solicitor of Clarity Simplicity Limited (“**the Applicant’s Representatives**”). The Respondent was neither present, nor was she represented, at the CMD. The clerk to the Tribunal was Matthew Tainsh.

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

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

**BACKGROUND**

1. An application was made to the Tribunal under section 16 of the 2014 Act for civil proceedings in relation to matters associated with a tenancy under the Housing (Scotland) Act 1988 (“**1988 Act**”). The application was made in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended, (“**2017 Regulations**”). More specifically, the application was made in

terms of rule 70 (*Application for civil proceedings in relation to an assured tenancy under the 1988 Act*) of the HPC Rules.

2. In terms of the application form, the Applicant was seeking an order for payment from the Respondent "in the sum of outstanding rental arrears presently £2,250.00 sterling with interest at the rate of 8% per annum from the date of service until payment".
3. A notice of acceptance of the application was issued by the Tribunal dated 23 November 2018 under rule 9 of the HPC Rules ("**Notice of Acceptance**"), which confirmed that the application paperwork had been received by the Tribunal on 12 October 2018. However, the Legal Member noted that, at that date, the application was incomplete and further application paperwork was received on 29 October 2018 from the Applicant's Representatives, after receipt of which the Notice of Acceptance was issued.
4. The Respondent and the Applicant's Representatives were each respectively sent a letter by the Tribunal dated 23 January 2019 confirming that the application had been received, intimating the date, time and place of the CMD and noting that written representations from the Respondent must be received by 11 February 2019.
5. A certificate of intimation was provided to the Legal Member from Roderick Alexander Macpherson, sheriff officer of Rutherford & Macpherson, stating that the letter from the Tribunal to the Respondent was served on the Respondent "by means of a letterbox" within the Property on 24 January 2019.
6. No written representations or other communication were received by the Tribunal from the Respondent.
7. Mr Chisholm confirmed that the Respondent was still in occupation of the Property and that the Applicant was seeking to recover possession of the Property from the Respondent by virtue of another (separate) application which had been made to the Tribunal and which was currently subject to an appeal by the Applicant's Representatives on behalf of the Applicant.
8. The Legal Member was satisfied, on the balance of probabilities, that the Respondent had been given notice of the date, time and place of the CMD as was required in terms of rules 24 and 29 of the HPC Rules and that, therefore, the CMD may proceed in the absence of the Respondent.

#### **THE PROCEEDINGS, NAMELY THE CMD**

9. As noted above, the application form stated that the Applicant was seeking an order for payment of £2,250 (plus interest).
10. However, within the application paperwork, there was a rent payments schedule in respect of the period from 7 March 2018 to 7 October 2018 ("**Original Rent Payments Schedule**"), which stated that there was an outstanding balance of £2,950. In addition, no entry appeared to have been narrated for 7 August 2018.

The outstanding balance as at 7 July 2018 (as per the Original Rent Payments Schedule) was £2,250.

11. The Applicant's Representatives had provided (by e-mail on 11 February 2019 at 17:04) an updated rental arrears statement in respect of the period from 7 March 2018 to 7 February 2019 ("**Updated Rent Payments Schedule**"), which stated that there was an outstanding balance of £4,160. Based on the figures stated in the Updated Rent Payments Schedule, the correct total should have been £4,160.40. Again, no entry appeared to have been narrated for 7 August 2018.
12. Mr Chisholm confirmed to the Legal Member that the Applicant was seeking an order for payment of the principal sum of £4,160, rather than £2,250. In response to a question from the Legal Member, he confirmed that he wished to seek to amend the application in that respect and that, if the amendment was not allowed, the Applicant was seeking the principal sum of £2,250. Mr Chisholm confirmed that the Updated Rent Payments Schedule had not been intimated to the Respondent but submitted that the additional arrears were due from the Respondent.
13. Mr Chisholm confirmed that, prior to 7 March 2018, the rent had been paid, the last full payment of rent having been received by the Applicant on 18 February 2018. He also noted that the payments in January 2019 and February 2019, each respectively of £294.80 were from benefits payments.
14. With regard to the claim in respect of interest, Mr Chisholm was unable to provide any authority for the power of the Tribunal (as opposed to a sheriff court) to award judicial interest.
15. Mr Chisholm exhibited to the Legal Member a copy of page 2 of the tenancy agreement (which had been omitted from the application paperwork). Mr Chisholm did not make any submission that the tenancy agreement included a provision for interest being charged.

## **FINDINGS IN FACT**

16. The tenancy agreement provided for the payment of rent at the rate of £450 per month, payable on the 7<sup>th</sup> day of each month.
17. The Legal Member was satisfied, on the balance of probabilities, that an assured tenancy was continuing and that rent continued to fall due and payable on the 7<sup>th</sup> day of each month.
18. The Legal Member was satisfied, on the balance of probabilities, that there were arrears of rent of no less than £2,250 (being the amount stated in the application form) when the application form was submitted to the Tribunal and when the letter from the Tribunal dated 23 January 2019 was served on the Respondent.
19. There was no contractual arrangement between the Applicant and the Respondent for the payment of interest.

## REASONS FOR DECISION

20. The request to amend the application was not allowed by the Legal Member. The request had not been made timeously and the Updated Rent Payments Schedule had not been intimated to the Respondent.
21. Any order for payment regarding arrears of rent may only be granted with regard to amounts payable in respect of rent which have become (and remain) due and payable, and in respect of which the respondent party has had reasonable notice of the application for the order.
22. The Legal Member was satisfied, on the balance of probabilities, that the Respondent had an obligation to pay the amount claimed in the application form, namely the rent of £450 per month due as at 7 March 2018, 7 April 2018, 7 May 2018, 7 June 2018 and 7 July 2018 (totalling £2,250) and that she had failed to comply with that obligation.
23. As at the date of the CMD, the Legal Member was not satisfied that the power of the sheriff court to make awards for judicial interest had transferred to the Tribunal, that the Tribunal had not otherwise had that power conferred on it and that, accordingly, the Tribunal did not have power to award judicial interest in this case.

## DECISION

24. The Tribunal decided that an order be granted against the Respondent for payment of the sum of £2,250 (two thousand two hundred and fifty pounds) sterling.
25. The order referred to in the preceding paragraph was intimated orally to Mr Chisholm during the CMD.

## Right of Appeal

**In terms of Section 46 of the Tribunals (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.**

**P Woodman**

Legal Member

15.2.19

Date