



**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/18/1203

Re: Property at 4/1 Christian Crescent, Edinburgh, EH15 3AE (“the Property”)

Parties:

Ms Sheila Kidd, 5/2 St Mary's Place, Edinburgh, EH15 2QF (“the Applicant”)

**Ms Lucy Dalziel, 4/1 Christian Crescent, Edinburgh, EH15 3AE (“the
Respondent”)**

Tribunal Members:

George Clark (Legal Member) and Eileen Shand (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Payment by the Respondent to the Applicant of Two Thousand Four Hundred and Fifty Pounds and Twenty One Pence should be made

Background

By application, received by the Tribunal on 16 May 2018, the Applicant sought an Order for Payment of £3,800.22, with interest at 8% per annum from the date of citation until payment and an Order for expenses.

In the papers which accompanied the application, the Applicant stated that the Respondent had rented the Property for the period from 26 June 2017 to 26 April 2018, but had failed to fulfil her obligation to pay rent. As at the date of the application, the rent arrears stood at £3,800.22. The Applicant also wished an award of expenses due to the unreasonable conduct and behaviour of the Respondent remaining within the Property.

The application was also accompanied by a copy of a Short Assured Tenancy Agreement between the Parties, the tenancy commencing on 26 June 2017 and ending on 25 December 2017, and continuing thereafter on a month-by-month basis until ended by either party on giving the other party not less than one month's prior notice of intention to terminate. The rent was £675 per month

A Case Management Discussion was held on 6 September 2018. The Tribunal decided to schedule a hearing for 19 October 2018. That hearing was postponed and the Parties were advised of a new date for the hearing.

The Respondent made no written representations to the Tribunal.

On 14 November 2018, the Applicant's solicitors submitted further written representations, including an up-to-date rent statement showing arrears as at 26 October 2018 of £2,450.21.

The Hearing

A hearing was held at Riverside House, 502 Gorgie Road on the afternoon of 22 December 2018. The Applicant was present at the hearing and was represented by Mr Scott Runciman of Gilson Gray LLP, solicitors. The Respondent was present at the hearing and was supported by Lisa Turnbull..

Reasons for Decision

The Applicant's solicitor told the Tribunal that the Order he was seeking was for payment of the sum of £2,450.21, as set out in the most recent rental statement which the Tribunal had seen, together with interest and expenses, as set out in the application.

The Respondent accepted at the hearing that the sum sought was lawfully due. She had had personal and health problems and, in her own words, "had buried my head in the sand" and accepted that the issue of arrears had not been contributed to by any problems related to housing benefit.

The Tribunal was satisfied that the sum sought by way of arrears of rent was lawfully due by the Respondent.

The Applicant's solicitor requested an Order for payment of interest on the sum due, arguing that the transfer of jurisdiction from the sheriff court to the Tribunal by Section 16 of the Housing (Scotland) Act 2014 allowed the Tribunal to award interest on sums due in terms of Orders for Payment. The Tribunal, however, determined that the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Regulations") did not contain any provision which would allow it to make an award of interest in respect of any sum it required a Respondent to pay to an Applicant, so refused the request for interest contained in the Application.

The Tribunal considered the Applicant's request for expenses. The Tribunal can award expenses against a party, but in terms of Rule 40 of the Schedule to the 2017 Regulations, it can only do so where that party through unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense. The Applicant's solicitor asked the Tribunal to accept that, but for the behaviour of the Respondent in failing to participate in the Case Management Discussion of 6 September 2018, other than to request that it be conducted by way of a telephone call, the case could have been decided at the Case Management Discussion. The view of the Tribunal was that the Tribunal had, at the Case Management Discussion taken the decision that the matter required to be heard at a full hearing and that the Respondent's behaviour in the conduct of the case did not amount to unreasonable behaviour. The Respondent had exercised her right not to make written representations and to await the outcome of the application to the Tribunal without engaging in the process and she was present at the hearing. Accordingly, the Tribunal refused the request for the Order to include an award of expenses.

Decision

The Tribunal determined to grant an Order for Payment by the Respondent to the Applicant of the sum of, £2,450.21, but refused the application in respect of interest and expenses.

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.

Mr George Clark

Legal Member/Chair

22 November 2018

Date