



**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/18/1996

**Re: Property at Arniefoul, Mill Cottage, Glamis, Forfar, DD8 1UD (“the
Property”)**

Parties:

**Earl of Strathmore and Kinghorne Estate, Estates Office, Dundee Road,
Glamis, Forfar, DD8 1RJ (“the Applicant”)**

**Mr Robert Park, 8 Sycamore Place, Northmuir, Kirriemuir, DD8 4TH (“the
Respondent”)**

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for payment of the sum of £4,000 rent
arrears with interest thereon at the rate of 5% over the base rate of the Bank of
Scotland from time to time from the date of service of the application on the
Respondent to the date of payment should be granted**

Procedural Background:

The Applicant is seeking an order for payment of rent arrears for the property. An application in terms of Rule 70 (Civil Proceedings) was lodged on 3 August 2018 and the sum outstanding stated as £4000.00 rent arrears, based on a monthly rent of £500 for a Short Assured Tenancy from 28 August 2015 to 28 June 2018 for the property.

The Applicant lodged the Short Assured Tenancy Agreement dated 28 August 2015 and a Rent Statement dated 28 June 2018 showing as the outstanding amount the sum of £4,500 as “Running Balance” as of 28 June 2018 and a payment demand letter to the Respondent dated 5 July 2018, served on him recorded delivery 6 July 2018, showing the sum outstanding as £4,000.00 on a Sales Statement up to and including 28 June 2018.

The claim to the tribunal included an unspecified claim for expenses and a claim for interest at the rate of 8% from the last date of service.

The Tribunal fixed a Case Management Discussion for 9 October 2018 at 10 am at which Ms Deng from Thorntons Law LLP, the Applicants' Representative attended.

The Respondent did not attend.

Service of the case papers and the notification of the Case Management Discussion by Sheriff Officers had been effected on the Respondent on 30 August 2018. This included the information that the tribunal could do anything at a Case Management Discussion it could do at a hearing, including granting an order. No response had been received from the Respondent.

Submissions at the Case Management Discussion:

Ms Deng explained the discrepancy in the arrears figure confirming that the sum outstanding in rent arrears was in fact £4,000 as the Respondent had moved out on 27 June 2018 and the rent charge for the next month starting 28 June 2018 had then been credited to the account because the premises had been vacated. The deposit had already been dealt with and was not available towards rent arrears. The sum due was thus £4000. The Respondent had been in discussion with the estate manager and had repeatedly promised payment of the arrears but this payment had not been forthcoming.

The Applicant sought expenses of the action. This was fully discussed at the Case Management Discussion. Rule 40 of the Rules of Procedure sets out that "the First-tier Tribunal may award expenses as taxed by the Auditor of the Court of Session against a party but only where that party through unreasonable behaviour in the conduct of the case has put the other party to unnecessary or unreasonable expense." Given the nature of the proceedings and the fact that no representations were made by the Respondent I do not consider that this was the situation in which the Tribunal would award expenses. Expenses are no longer dealt with on the basis of expenses following success as they were in Sheriff Court Civil Actions. In this case the Applicant's Representative initially argued that because there is a contractual provision in clause 2.5.6 of the tenancy agreement under which the tenant is liable for the cost of any enforcement action by the landlord against the tenant, including all legal and judicial expenses, this could be awarded on a contractual basis. However, this was not claimed as a quantified demand in the application and no vouching was provided for any costs arising from the enforcement action. There was no notice to the Respondent of any specific costs as a separate contractual demand in terms of the tenancy agreement. Following the discussion, the Applicant's representative ultimately did not insist on a claim for expenses.

The Applicant's representative invited me to consider awarding interest in terms of the judicial interest of 8%, failing which in terms of the contractual provisions in clause 2.5.5 of the tenancy agreement.

Findings in Fact:

1. **The Applicants and the Respondents entered into a Short Assured Tenancy on 28 August 2018. The Respondent moved out on 27 June 2018.**
2. **In terms of the Agreement rent of £500 is due in advance of each rent payment date (Clause 2.1)**
3. **The amount of arrears as at the end of the tenancy is £4,000 and remains outstanding.**
4. **Payment had been demanded from the Respondent and a letter with a payment demand sent on 5 July 2018. No payments have been received.**
5. **The tenancy agreement includes an interest provision at the rate of 5% over the base rate of the Bank of Scotland for unpaid sums in clause 2.5.6.**

Reasons for the Decision:

The Tribunal make the decision on the basis of the written evidence lodged by the Applicant and the information given at the hearing by the Applicant's representative on his behalf.

There were no representations by the Respondent and thus there is no dispute about the facts of the case.

The rent outstanding as of 28 June 2018 and as at the date of the Case Management Discussion based on the amounts paid as per the rental statement lodged and the rent charge of £500 per calendar month and the information from the Applicant's representative at the hearing is £4,000.

There was no valid defence to the action. It is not in dispute that the sum of arrears is due to the Applicant.

With regard to the claim for interest, the First-tier Tribunal's jurisdiction for civil matters arises from S 16 of the Housing (Scotland) Act 2014 and consequential amendments as detailed in Schedules 1 and 2 of the Housing (Scotland) Act 2014, none of which make reference to The Administration of Justice (Scotland) Act 1972 S 4, which is the legislative basis for judicial interest at the rate of 8%.

I thus do not consider that I have jurisdiction to award judicial interest at that rate.

I consider that the Respondent had fair notice of a demand for interest in this case when the action was served on him and was aware of the contractual provision of interest contained in the tenancy agreement when he signed it. As no specific calculation of interest to the date of the hearing was provided the Applicant's representative was content for interest to be applied from the date of service of the application. I thus considered that an award of interest of 5% over the base rate of the Bank of Scotland relevant from time to time from the date of service of the application to the date of payment should be made for the outstanding sum of arrears of £4000..

Decision:

Petra Hennig-
McFatrige

The Tribunal grants an order for payment of the sum of £4,000 rent arrears with interest thereon at the rate of 5% over the base rate of the Bank of Scotland from time to time from the date of service of the application on the Respondent to the date of 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.

Petra Hennig-McFatrige

5.10.18
Date

*Insert or Delete as required