



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 16 Housing (Scotland) Act  
2014**

**Chamber Ref: FTS/HPC/EV/21/1254**

**Property at 10 Fank Brae, Mallaig, Inverness-shire, PH41 4RQ (“the Property”)**

**Parties:**

**Mr Graham Leck, 42 Denoon Terrace, Dundee, DD2 2EB (“the Applicant”)**

**Mr Ian MacLeod, 10 Fank Brae, Mallaig, Inverness-shire, PH41 4RQ (“the  
Respondent”)**

**Tribunal Member:**

**Josephine Bonnar (Legal Member)  
Ahsan Khan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that an order for payment of the sum of £6365 should be  
granted against the Respondent in favour of the Applicant.**

**Background**

1. By application dated 24 August 2021, the Applicant seeks a payment order in relation to arrears of rent. A copy short assured tenancy agreement and rent statement were lodged in support of the application.
2. A copy of the application was served on the Respondent by Sheriff Officer and both parties were advised that a case management discussion (“CMD”) would take place by telephone conference call on 30 September 2021 at 2pm. On 15 September 2021, the Applicant submitted an updated rent statement showing arrears of rent of £6915.

3. The CMD took place on 30 September 2021 at 2pm. A related application for an order for possession under Chamber reference EV/21/2048 also called. The Applicant was represented by Mr Piggot, solicitor. The Respondent did not participate and was not represented. He did not contact the Tribunal in advance of the CMD.

### **Case Management Discussion**

4. Mr Piggot advised the Tribunal that there had been a recent development regarding the applications. The Applicant recently contacted the Respondent about access to the property as he wanted to check its condition and make arrangements for a home report to be prepared, as he intends to sell. In response he received a text message from the Respondent who stated that he had vacated the property and put the keys through the letterbox. Following receipt of this message, the Applicant retrieved the keys and recovered possession of the property. He does not know when the Respondent moved out as he did not give notice, but no unopened mail was found in the property. Mr Piggot advised the Tribunal that he wished to withdraw the application for an order for possession as it is no longer required.
5. Mr Piggot referred the Tribunal to the updated rent statement lodged on 15 September 2021 and confirmed that he wished to amend the application to reflect the sum due in terms of that statement. The Tribunal allowed the application to be amended. Mr Piggot advised the Tribunal that this sum remains outstanding. It includes rent due on 4 September for the period to 4 October 2021. Although the Respondent has recently vacated the property, he did so without giving notice in terms of the tenancy contract, so the Applicant is entitled to rent for this period.
6. The Tribunal noted that a deposit of £550 is specified in the tenancy agreement and that the rent statement lodged includes credits which relate to payment of the deposit by the Respondent. Mr Piggot was unable to advise the Tribunal whether the deposit is currently held by a tenancy deposit scheme or is the possession of the Applicant but did not dispute that a deposit was paid. Mr Piggot also advised that interest on the principal sum is sought. The tenancy agreement makes provision for interest at 4% above the Bank of Scotland base rate, although it was conceded that interest is at the discretion of the Tribunal. The Tribunal noted that there is reference to interest in the updated rent statement but that the application form, paper apart and original rent statement lodged with the application do not make any reference to interest being claimed.

### **Findings in Fact**

7. The Applicant is the owner and former landlord of the property.
8. The Respondent was the tenant of the property in terms of a short assured tenancy. The Respondent has vacated the property and the Applicant has

recovered passion of it.

9. The Respondent was due to pay rent at the rate of £550 per month.
10. The Respondent owes the sum of £6365 in unpaid rent to the Applicant.

### **Reasons for Decision**

11. The application was submitted with a short assured tenancy agreement and a rent statement. In terms of the tenancy agreement, rent was due to be paid at the rate of £550 per month. The Respondent recently vacated the property without giving notice in terms of the tenancy agreement. The Tribunal is satisfied that the Respondent owes the sum of £6915 in unpaid rent.
12. In terms of the tenancy agreement the Respondent was due to pay a deposit of £550 at the start of the tenancy. The rent statement lodged by the Applicant confirms that this was paid in two instalments. Mr Piggot was unable to advise the Tribunal whether the Applicant has the deposit in his possession or if it is currently lodged in a tenancy deposit scheme, as required by the Tenancy Deposit Schemes (Scotland) Regulations 2011. The tenancy agreement is silent on the matter. However, it is evident that the deposit funds can be recovered by the Applicant (if they are not already in his possession) and applied to the outstanding rent arrears. The Tribunal therefore determines that the sum of £550 should be deducted from the sum specified in the rent statement, leaving a balance due of £6365.
13. The Tribunal considered the request for interest on the principal sum in terms of Rule 41A of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. This states the Tribunal “may include interest when making an order for payment” either at the rate stated in the tenancy agreement or at the rate ordered by the Tribunal. As Mr Piggot stated during the CMD, it is for the Tribunal to determine whether to include interest and the rate to be applied. Although the tenancy agreement states that interest may be due on unpaid rent, and the recent rent statement lodged refers to contractual interest, the Tribunal noted that the application and original rent statement do not include a request for interest. The Tribunal is therefore not satisfied that the Respondent has been given fair notice of the request for interest to be included and determined that this should be refused.
14. The Tribunal is therefore satisfied that a payment order should be granted for the sum of £6365.

### **Decision**

15. The Tribunal determines that an order for payment for the sum of £6365 should be made.

## **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.**

**Josephine Bonnar, Legal Member**

**30 September 2021**

