



**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/18/1562

**Re: Property at Flat 2F1, 69 Old Mill Road, Uddingston, G71 7PF (“the
Property”)**

Parties:

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

**Mr Arne Lindsay, Flat 2/1 4 Deanbrae Street, Uddingston, G71 7JT (“the
Respondent”)**

Tribunal Members:

George Clark (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the application should be decided without a
hearing, that the application should be granted and an Order for Payment
made in the sum of £4,404.97, with interest at 4% above the base-lending rate
of The Royal Bank of Scotland plc on £4,104.97 of that amount from the date of
the Order until payment. The application for expenses was refused.**

Background

By application, received by the Tribunal on 21 June 2018, the Applicant sought an Order for Payment of the sum of £4,404.97. This sum comprised arrears of rent in respect of a lease of the Property to the Respondent. The lease was a Short Assured Tenancy for a period of 6 months from 25 April 2014 to 25 October 2015 and, if not terminated at 25 October 2015, continuing on a two-monthly basis until terminated by two months’ notice in writing being given by either party to the other. The rent was £550 per month and there was provision for interest at 4% above The Royal Bank of Scotland plc base-lending rate on any rental payments not made within 14 days of their due date. A deposit of £625 was payable.

The arrears of rent were set out in a rental statement to 28 March 2015 and amounted to £1,602.23.

The Applicant was also seeking an Order for Payment in respect of violent profits from 26 April 2015 to 17 September 2015 in the sum of £2,502.74 and reimbursement of cleaning costs of £300, together with interest on the whole sum sought at the judicial rate of 8% and expenses in terms of Rule 40 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Regulations").

The Tribunal advised the parties by letter dated 10 December 2018 of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written representations by 31 December 2018. The Respondent made no written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held at Glasgow Tribunals Centre on the morning of 9 January 2019. The Applicant was represented by Mr Fraser Cameron of Gilson Gray LLP, solicitors, Edinburgh. The Respondent was neither present nor represented at the Case Management Discussion.

Mr Cameron advised the Tribunal that the Respondent had vacated the Property on 17 September 2015 and that the figure for violent profits represented the unpaid rent, with interest as provided for in the lease from 28 March 2015 to 17 September 2015, no rental payments having been received in the intervening period. He acknowledged that it was likely that the entire deposit of £625 had been refunded to the Applicant by the tenancy deposit scheme with which it had been lodged, but that this would in all probability have happened prior to the calculation of unpaid rent and violent profits.

The Tribunal advised that it was not prepared to make an award of interest at the judicial rate of 8% and the Applicant's representative then sought an award of interest on the unpaid rent (including violent profits) element of the Order to be made.

Reasons for Decision

Rule 17 of the 2017 Regulations provides that the Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision. The Tribunal was satisfied that it had before it all the information and documentation it required and that it would decide the application without a hearing. The Tribunal was prepared to accept that the calculation of unpaid rent from 28 March 2015 to 17 September 2015 would have taken into account the likely repayment to the Applicant of the deposit of £625 and that the sum of £4,104.97 was due by the Respondent in respect of unpaid rent (with interest as provided for in the lease) and that, as the Respondent had not challenged the vouching of a bill for cleaning, the sum sought of £300 was lawfully due by the Respondent.

The Tribunal accepted the argument put forward by Mr Cameron that the Order should include an award of interest on the unpaid rent element at the rate provided for in the lease, from the date of the Order until payment.

The Tribunal was unwilling to make an order for expenses, as Rule 40 of the 2017 Regulations restricts such an award to unnecessary or unreasonable expense arising from unreasonable behaviour of a party in the conduct of a case. The Respondent's failure to submit written representations or to attend or be represented

at the Case Management Discussion could not be held to be unreasonable behaviour in the conduct of the case.

Decision

The Tribunal decided to grant the application without a hearing and to make an Order for Payment by the Respondent to the Applicant of £4,404.97, with interest on £4,104.97 of that sum at 4% above the base-lending rate of The Royal Bank of Scotland plc from the date of the Order until payment. The Tribunal refused the application for interest at the judicial rate and refused the application for 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.

G Clark

Legal Member/Chair

9 January 2019

Date