



**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/22/2697**

**Re: Property at 16 Carcluie Crescent, Ayr, KA7 4SS (“the Property”)**

**Parties: Bothy Property Limited, Alloway House, 6 Alloway Place, Ayr, KA7 2AA (“the Applicant”)**

**Mr James Kilbride, Mrs Morag Kilbride, 16 Carcluie Crescent, Ayr, KA7 4SS (“the Respondent”)**

**Tribunal Members:**

**Jan Todd (Legal Member) and Mary Lyden (Ordinary Member)**

**Decision made in terms of Rule 18 of the Tribunal Rules of Procedure**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £9,424 be payable by the Respondents to the Applicant in the sum of £100 per month with interest at the rate of 8.25% from the date of the decision until payment.**

**Background**

1. The Applicant made an Application on 3<sup>rd</sup> August 2022 for an order for repossession of the Property in terms of Rule 65 of the Tribunal Rules.
2. The Applicant is the owner of the Property the title having been transferred from Mr Kevin McGlynn the named Landlord in an Assured Tenancy entered into with the Respondents who are the tenants in the Property.
3. A CMD was held on 7 December 2023 at which the Applicant was represented by Ms Claire Mullen from TC Young solicitors. The second named Respondent Ms Kilbride was also on the call as was the Respondents’ representative Mr Gerard Tierney from Ayr Housing Aid Centre.
4. The Applicant had lodged and the Tribunal had sight and considered the following documents:-
  - a. Application for payment dated 3<sup>rd</sup> August 2022

- b. Copy Tenancy Agreement between Mr Kevin McGlynn and the Respondents in respect of the Property dated 22nd June 2016
  - c. Rent statement dated from 4th September 2018 to 10th June 2022.
5. The Tribunal issued a direction in the conjoined application for eviction asking the applicant to confirm if and when the Respondents were advised of the change of ownership of the Property and landlord from Mr McGlynn to Bothy Property Ltd.
  6. The Applicant's solicitor Ms Mullen replied on 23rd November and advised that the letting agent had changed in 2019 and she was not able to find any evidence confirming the change of landlord had been notified to the tenants but that updated payment details had been sent to them. The Applicant then lodged an application to amend the sum sought from £10,424.18 to £13,424.18 and lodged an updated rent statement in support of this.
  7. Mr Tierney lodged written submissions acknowledging that the Respondents agreed there were some rent arrears but confirming they did not agree the amount claimed.
  8. At the CMD which took place by teleconference and Ms Mullen confirmed she was seeking an order for payment of rent arrears. She advised at the date of the application the rent arrears were £10,424.18. She also advised that they stood at £12, 674.18 at the date of the CMD as the Respondents had recently on 16th November made a payment of £750. She advised that the sum outstanding represented 16 months of rent due and outstanding and that there was no agreement between the landlord and tenant to defer the rent.
  9. Mr Tierney advised that he had been asked to say that the Respondents were not sure what the level of arrears was. There had been a significant impact from Covid on the Respondents income particularly Mr Kilbride's ability to work as a taxi driver and in addition he was then involved in a car accident which meant his car was not available for some time which also had an impact on his income. Mr Tierney advised that during this period the Respondents had kept in touch with the letting agents, had applied for assistance with housing costs and Mrs Kilbride had received sporadic help with housing costs.
  10. At the end of the CMD the parties had agreed that the Respondents were tenants in the Property and owed some rent but the amount was in dispute. A hearing was then fixed for 21<sup>st</sup> June 2023 to be held in person.
  11. On 11<sup>th</sup> May the Applicants representative advised the Tribunal in writing that the parties had reached a settlement the terms of which were that
    - a. The Respondents consented to a payment order in the sum of £9424
    - b. The Applicant will consent to the Respondents time to pay at the rate of £100 per month.
    - c. Interest should be applied at the rate of 8.25% because clause 7.12 of the tenancy agreement provides for interest at the rate of 4% above the HSBC plc base rate and the said base rate is 4.25%.
  12. Ms Mullen submitted that the matter could be dealt with administratively without the need for a hearing.
  13. Mr Tierney for the Respondent advised by email that this was the agreed position between the parties and he awaited the signature of the time to pay application. He also agreed that if the Tribunal wanted to deal with the issue administratively then he was agreeable to that.

14. The Tribunal wrote to both parties to advise that to deal with the matter in terms of Rule 18 which allows the Tribunal to make a decision without a hearing they required the following to be confirmed:-
1. *That the Respondents have been given or have had the opportunity to seek legal advice and agree to an order being granted against them for the sum of £9,424 in respect of rent arrears for her tenancy of the Property at 16 Carcluie Crescent Ayr.*
  2. *That the Respondents agree the Applicant is now the owner of the Property and entitled to rent arrears as landlord.*
  3. *Confirmation of the end date of the tenancy.*
  4. *That a time to pay application is submitted signed by the Respondent offering to pay the agreed debt at £100 per month.*
  5. *That the Respondents are aware that if they do not maintain the monthly payments the order can be enforced against them for the full amount remaining.*
  6. *That the Applicant agrees to accept the time to pay application at a rate of £100 per month, once it is submitted and they have checked it.*
  7. *That both parties agree to waive their right to proceed to the hearing scheduled for 21st June and agree to the Tribunal making a decision in terms of Rule 18 on or before that date in the absence of both parties.*
15. On 31<sup>st</sup> May the Respondents' representative confirmed that the Respondents had been given the opportunity of taking advice and were agreeing to the granting of an order for £9,424; that they agreed the Applicant was now the owner of the Property and entitled to rent arrears; that they had handed the keys back on 22<sup>nd</sup> February 2023 and the tenancy had ended; that they have completed a time to pay application and they waived their right to proceed with a full hearing and agreed to the decision being made under rule 18. The Applicants also indicated their agreement to points 6 and 7 in their email of 7<sup>th</sup> June. A time to pay application was then lodged and Mr Tierney also agreed that the Respondents understood interest would be added to the order at the rate of 8.25%.

### **Findings of Fact**

1. The respondents entered into a lease of the Property with Mr Kevin McGlynn in the form of a Short Assured tenancy which commenced on 22<sup>nd</sup> June 2016
2. The Rent due in terms of the lease was ££750 per calendar month payable in advance.
3. Title to the Property was transferred to the Applicants on 10<sup>th</sup> May 2019 and the Applicants are now the landlord in the tenancy.
4. The lease ended on 22<sup>nd</sup> February 2023.
5. Rent is outstanding at the end of the tenancy in the amount of £9,424
6. The Respondent has offered to pay the sum due in instalments of £100 per month and the Applicant has accepted this offer.
7. Interest is due on rent outstanding in terms of clause 7.1.2 of the lease at the rate of 4% above the base rate of HSBC plc from time to time.

### **• Reasons for Decision**

8. The parties have entered into a lease where the Respondents leased the property originally from a Mr Kevin McGlynn and after the Applicants took over ownership from the Applicant. The Respondents have agreed that the Applicant is the current landlord and is due the arrears of rent.
9. The rent due in terms of the lease is £750 payable monthly.
10. The Applicant and the Respondents have come to an agreement that the sum of £9,424 is due in terms of rent at the end of the lease and the Applicant has accepted a time to pay offer for £100 per month. The Respondents have accepted that interest at the rate of 8.25% is also due on the amount outstanding from time to time from the date of the order.
11. In terms of Rule 18 the Tribunal can make a decision without a hearing if the First Tier Tribunal considers that i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case and ii) to do so will not be contrary to the interests of the parties.
12. The Tribunal has carefully considered all the written evidence and submissions presented by both parties and their representatives. It is clear that the Respondents were the tenants in a lease which the Applicants have taken over and the Applicant is entitled to payment of rent. Given they have come to an agreement on the sum due in respect of rent arrears, that the Respondents have had advice and support from a housing adviser and the Applicants have accepted a time to pay application the Tribunal is satisfied that an order should be granted in the terms agreed by the parties. The Tribunal finds that rent is outstanding and remains unpaid at the sum of £9,424 and finds it fair and appropriate to make an order for payment for the sum of £9,424 to be paid in instalments of £100 per month, with interest at the rate of 8.25% from the date of the order.

- **Decision**

An order for payment of the sum of £9,424 plus interest at 8.25% from the date of the order at the rate of £100 per month is granted.

### **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.**

# J Todd

15<sup>th</sup> June 2023

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Legal Member/Chair

Date