



**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/20/0338

**Re: Property at Oaktree Cottage, Main Road, Cardross, Dunbartonshire, G82
5NY (“the Property”)**

Parties:

**Mr Glenn Kelly, Brook House, Lambert Road, Tamerton Foliot, Plymouth, PL5
4NB (“the Applicant”)**

**Ms Michelle Chandler, 24 Turnbull Avenue, Alexandria, Dunbartonshire, G83
0BG (“the Respondent”)**

Tribunal Members:

Neil Kinnear (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that**

Background

This is an application for a payment order dated 31st January 2020 and brought in terms of Rule 70 (Application for civil proceedings in relation to an assured tenancy under the 1988 Act) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant sought payment of arrears in rental payments and damages of £2,358.32 in relation to the Property from the Respondent, and provided with his application copies of a short assured tenancy agreement and a schedule calculating and setting out the rent arrears and damages claimed.

The short assured tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers, guidance notes from the Tribunal on 24th February 2020, and the Tribunal was provided with the execution of service.

A Case Management Discussion was set for 25th March 2020. That Case Management Discussion had to be cancelled as a result of the coronavirus pandemic, and the lockdown imposed in the United Kingdom as a consequence thereof. The Parties were subsequently notified with the details of a Tele-Conference and provided with dial-in details.

On 1st July 2020, the Respondent e-mailed the Tribunal. In that e-mail, she indicated that she no longer wished to contest the application, and offered to pay £50.00 per month in respect of the rent arrears sought.

The Tribunal replied to the Respondent's e-mail explaining that if she sought to make payment in instalments of the sum sought in this application, then she required to submit a time to pay application, duly completed, requesting that. The Tribunal provided the Respondent with the application form and guidance note, and communicated the contents of the Respondent's e-mail to the Applicant.

The Applicant responded on 8th July 2020 by e-mail, and stated that the offer of £50.00 per month was unacceptable. The Tribunal communicated the Applicant's response to the Respondent.

The Respondent e-mailed the Tribunal on 8th July 2020 enquiring what level of instalment payments the Applicant would be prepared to accept. She indicated that she was currently paying Council Tax arrears, and was not refusing to pay the Applicant. She did not provide any further details of her finances, and did not return a time to pay application form. She stated that she would offer more than £50.00 per month if she was able to, but that she was not in a position to do so. Finally, the Respondent stated that she was working at the time set for the Tele-Conference and would not participate in it.

Case Management Discussion

A Case Management Discussion was held at 10.00 on 14th July 2020 by Tele-Conference. The Applicant participated, and was not represented. The Respondent did not participate, nor was she represented.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant explained that he was prepared to be reasonable, and was willing to consider the possibility of instalment payments from the Respondent. However, he noted that he had little confidence that the Respondent would adhere to any instalment arrangement. The payments offered would take four years to meet the amount sought in the application, which is an unacceptably long period of time.

The Tribunal was invited by the Applicant with reference to the application and papers to grant an order for payment of the sum of £2,358.32, which is comprised of £3,543.32 of rent arrears, including contractual interest and modest contractual penalty charges, under deduction of repayment of the tenancy deposit of £1,275.00, to which is added a trace charge of £90.00, which charge is recoverable in terms of the lease agreement.

The Applicant indicated that interest had only been calculated to May 2019, and that although he was entitled to charge further interest to date, he would pragmatically not seek to do so in the circumstances.

Statement of Reasons

Section 16 of the *Housing (Scotland) Act 2014* provides as follows:

“16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3) Part 1 of schedule 1 makes minor and consequential amendments.”

Accordingly, the Tribunal has jurisdiction in relation to claims by a landlord (such as the Applicant) for payment of unpaid rental and damages against a tenant (such as the Respondent) under a short assured tenancy such as this.

The Tribunal considered the terms of the short assured tenancy agreement, the schedule of loss provided, the various other information provided by the Applicant, and the Applicant's submissions, and was satisfied that this disclosed an outstanding

balance due by the Respondent to the Applicant in respect of rent arrears and damages of £2,358.32.

Rental of £850.00 is chargeable in terms of clause 2 of the tenancy agreement, which also makes provision for a charge of £30.00 plus Vat to be charged on each instalment of rent which is paid late.

Clause 19 of the tenancy agreement provides that interest at the annual rate of 8% is chargeable on unpaid rent and other charges from the date when they fell due, and that the tenant is liable for the costs of the landlord incurred in pursuing payment from the tenant of any arrears of rent or other charges under the lease.

Accordingly, the Tribunal shall make an order for payment of the sum sought.

Decision

In these circumstances, the Tribunal will make an order for payment by the Respondent to the Applicant of the sum of £2,358.32.

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.

Neil Kinnear

14.7.20

Legal Member/Chair

Date