



**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/20/0563**

**Re: Property at 19 Lossie Place, Dundee, DD2 4AF (“the Property”)**

**Parties:**

**Mr Charles Grant, 7 The Orchard, Woodside, Burrelton, Blairgowrie, PH13 9NQ  
 (“the Applicant”)**

**Ms Susan Kettles, 107 Craigie Avenue, Dundee, DD4 7LR (“the Respondent”)**

**Tribunal Members:**

**Richard Mill (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 be granted against the Respondent for the sum of Seven Thousand One Hundred Pounds Sterling (£7,100) with interest thereon at the rate of 3% per annum running from the date of the decision of the First-tier Tribunal to grant this order, being 17 December 2020, until payment.**

**Introduction**

This is an application under Rule 70 and Section 16 of the Housing (Scotland) Act 2014.

An initial Case Management Discussion (CMD) took place by teleconference on 21 July 2020.

The application, in which a payment order is sought in respect of arrears of rent, was heard with case reference FTS/HPC/EV/20/0562 between the same parties. That was an application for an order for possession upon termination of a short assured tenancy.

The Tribunal found that no valid AT5, giving notice to the respondent that the lease to be entered into was a short assured tenancy, was issued in advance of the tenancy being created. No short assured tenancy was created and, in the circumstances, the eviction application was dismissed. The payment order application, which at that time sought a total of £5,400, was established but the applicant's agent did not seek an order at that time. She asked that the application be continued to allow for an amendment in respect of additional arrears of rent which had accrued.

This application was therefore continued to a fresh CMD.

The respondent has since left the property. A new address has been identified for her.

A formal Rule 14A amendment, increasing the sum sought from £5,400 to £7,200, was made to the Tribunal on 19 November 2020. Proof of Royal Mail, 'signed for' delivery, was sent to the Tribunal on 23 November 2020. This evidences that the respondent received delivery of the amendment application on 21 November 2020.

Sheriff Officers intimated the fresh CMD to take place on 17 December 2020 upon the respondent on 23 November 2020.

The CMD took place by teleconference on 17 December 2020 at 2 pm. The applicant was represented by Tanya Royle of Mess Baillie Shepherd, solicitors. The respondent did not participate in call. There was no barrier to her doing so.

### Findings and Reasons

The property is 19 Lossie Place, Dundee DD2 4AF.

The parties entered into a tenancy agreement which commenced on 9 January 2015. The applicant intended that this be a short assured tenancy but, due to the failure to serve the relevant AT5 notice timeously, the tenancy created was an assured tenancy.

The rent payments were stipulated at £450 per month. A deposit in the sum of £450 was paid.

The respondent fell into arrears of paying the rent due under the lease. Payments had been made up to and including June 2019. Since then no payments were made.

The respondent vacated the property in mid October 2020. The total arrears of rent outstanding as at that date was £7,200. This is evidenced in terms of the updated rent statement which has been produced. The deposit paid is not being returned to the applicant in lieu of unpaid rent.

The applicant's representative advised that despite the respondent not engaging with this process there has been direct discussions with her and an agreement has been entered into to recover the sums due at a rate of £100 per month. No time to pay application has been made so the Tribunal cannot consider a time to pay direction. The Tribunal would not find repayment at this rate reasonable in any event given the

length of time which it would take to clear the sums due. £100 has been paid in terms of this direct agreement and therefore the sum due now is £7,100.

The Tribunal found the rent statement and other documentation produced by and on behalf of the applicant to be credible and reliable. The Tribunal attached weight to all of this evidence, together with the submissions made on behalf of the applicant. All of this is unchallenged.

The applicant is entitled to recover arrears of rent lawfully due under and in terms of the lease agreement between the parties. A payment order in the sum of £7,100 is granted against the respondent.

In the application interest is sought at the rate of 8% per annum. Such a request is equivalent to a crave for judicial interest which has no application to the First-tier Tribunal. The Administration of Justice (Scotland) Act 1972, Section 4 as amended by the Act of Sederunt (Interest in Sheriff Court Decrees and Extracts) 1993 covers the payment of judicial interest in the Sheriff Court and these provisions have not been extended to the Tribunal. The payment of a judicial rate of 8% is no statutory basis for the Tribunal. A rate more in line with the use value of the money and the loss actually suffered by the applicants corresponding to the investment/borrowing rate which would be real loss suffered by the applicants can be justified. The current rate borrowing rate for short-term commercial loans is approximately 3% per annum and that is an appropriate rate of interest to be imposed by the Tribunal.

### **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.**

**Richard Mill**

**17 December 2020**

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**Legal Member/Chair**

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**Date**