



**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/20/1564**

**Re: Property at 59C Elgin Street, Dunfermline, Fife, KY12 7SA (“the Property”)**

**Parties:**

**Mr Andrew J Dewar, C/O Martin and Co 32 Chalmers Street, Dumfermline, Fife, KY12 8DF (“the Applicant”)**

**Mr Ian A Symms, present address unknown (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member)**

**Decision (in absence of the Respondent)**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent is in breach of the tenancy agreement with the Applicant and has failed to pay rent. The Tribunal accordingly has decided to make an order for payment in the sum of ONE THOUSAND EIGHT HUNDRED AND FORTY SIX POUNDS AND SEVENTY NINE (£1846.79) STERLING together with interest at the rate of 3% per annum from the date of this decision until payment. The order for payment will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.

**Background**

1. By application dated 23 July 2020, the Applicant’s solicitor applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for payment of rent arrears under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The application was accompanied by a copy of the Private Residential Tenancy between the parties signed and dated 27 June 2019, a rent statement to 10 March 2020 and letter with a Notice to Leave dated 5 February 2020.
3. On 12 August 2020, the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. The Tribunal served a copy of the application on the Respondent by way of advertisement on the Tribunal's website in terms of Rule 6A of the Regulations, the Respondent's address being unknown and invited the Respondent to attend the Case Management Discussion ("CMD") on 2 October 2020. A copy of the Execution of Service by advertisement was received by the Tribunal.

### **Case Management Discussion**

5. The Tribunal proceeded with the Case Management Discussion on 2 October 2020 by way of teleconference. The Applicant was represented by Mr David Phinn from Miller Samuel Hill Brown, Solicitors. There was no appearance by or on behalf of the Respondent despite the teleconference starting 10 minutes late to allow the Respondent plenty of time to join. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in his absence.
6. The Tribunal had before it a copy of the Private Residential Tenancy between the parties signed and dated 27 June 2019, a rent statement to 10 March 2020 and letter with a Notice to Leave dated 5 February 2020.
7. The Tribunal noted the terms of clause 8 of the Private Residential Tenancy where the Respondent had agreed to pay rent at £440 per month to the Applicant and that the Respondent had been in arrears through most of the tenancy. Mr Phinn referred the Tribunal to the letter of 5 February 2020 with the Notice to Leave which also asked for the Respondent's proposals for repayment of arrears which at that stage were £1760. No response had been made by the Respondent, who had left the Property on 7 March 2020. He submitted arrears were £1846.79 as at 7 March 2020 with reference to the rent statement lodged. Mr Phinn moved for an order for payment of arrears in the sum of £1846.79 together with interest at the judicial rate of 8% from the date of service of the application to payment.
8. Mr Phinn directed the Tribunal to Clause 9 of the tenancy agreement which entitled the Applicant to reasonable costs and expenses in relation to late payment of rent. However the Tribunal noted that no actual rate of interest was provided for in the tenancy agreement. The Tribunal raised a concern that that rate sought, despite being the judicial rate, was high in the present climate. The Tribunal having considered the matter awarded interest at 3% from the date of the order until payment in terms of Rule 41A of the Regulations.

## **Findings in Fact**

9. The Applicant and the Respondent agreed by way of a Private Residential Tenancy between the parties signed and dated 27 June 2019, in relation to the Property that the Respondent would pay the Applicant a calendar monthly rent of £440.
10. The Respondent had fallen into arrears of rent.
11. The tenancy terminated on 7 March 2020 at which stage the arrears amounted to £1846.79. The Respondent has made no payments of rent since.

## **Reasons for Decision**

12. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the submissions made on behalf of the Applicant. The Tribunal noted that the Respondent had been in arrears for a large part of the tenancy and that that the amount of arrears had increased until the termination date. The Applicant had produced evidence of persistent non- payment of rent with reference to the tenancy agreement and the rent statement lodged. The Tribunal was satisfied on the basis of these documents, together with Mr Phinn's submissions that the order for payment in favour of the Applicant be granted. The Tribunal had discretion to award interest and determined that in the circumstances interest at 3% per annum was fair.

## **Decision**

13. The Tribunal granted an order for payment of £1846.79 with interest at 3% per annum from the date of the decision to payment.

## **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.**

# Shirley Evans

**2 October 2020**

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**Legal Member**

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**Date**