



**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/21/1006

**Re: Property at Flat 3/2, 9 Robertson Street, Greenock, PA16 8DB (“the
Property”)**

Parties:

**Miss Chiara Louise Cacioppo, 7 Gleneagles Drive, Gourock, PA19 1HX (“the
Applicant”)**

Mr Lee Doherty, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Applicant is entitled to an order for payment for
£1171.50 (ONE THOUSAND AND SEVENTY ONE POUNDS AND FIFTY PENCE)
with interest at 8% per annum from 1st November 2021 and £882.89 (EIGHT
HUNDRED AND EIGHTY TWO POUNDS AND EIGHTY NINE PENCE) which has
no interest attached to it.**

Background

1. This is an application in terms of Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). In the application the Applicant sought an order for payment of the sum of £475 plus interest at 8% per annum in terms of s16 of the Housing (Scotland) Act 2014.
2. The Tribunal had before it the following documents:
 - a) Application dated 27th April 2021;
 - b) Tenancy agreement between the parties signed 25th May 2017 until 25th May 2017 and on a month to month basis thereafter;
 - c) Power of Attorney dated 31st October 2017;

- d) Service by Advertisement dated 26th July 2021. The Advertisement commenced 16th June 2021.
3. A Case Management Discussion ("CMD") was held on 26th July 2021 at 10am by teleconferencing. The Applicant was represented by Mr Gino Cacioppo, the Applicant's father. The Applicant did not attend. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. Mr Cacioppo informed the Tribunal that he had raised the application in terms of the rent arrears. He sought the amount to the end of the tenancy not simply one months rent at £475 plus interest at 8% as detailed in the application. However, during the CMD it became clear that there were a number of other issues that he wished to claim for including rent arrears to the date the keys were returned and damaged that was caused by the Respondent. The Tribunal decided to continue the CMD to a further CMD on another date to allow Mr Cacioppo to amend the sum sought and provide evidence to support the claim of the outstanding amount. The Tribunal issued a direction to Mr Cacioppo with evidence required.
 4. A CMD was held on 10th September 2021 at 10am by teleconferencing. The Applicant was represented by Mr Gino Cacioppo, the Applicant's father. The Applicant did not attend. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Tribunal noted that Mr Cacioppo has complied with the decision but not fully. Still missing was a detail of rent sought and the addition of the damages costs. Mr Cacioppo had sent this to the Tribunal on 7th August 2021 by email. The Tribunal noted that this was not with the papers issued to it. The CMD was adjourned briefly to allow investigations to be undertaken. In the intervening time Mr Cacioppo resent the information. When the Tribunal reconvened Mr Cacioppo stated that he had sent several large emails that day which may have caused a technical issue. It was concluded that the email containing the request to include damages and increase the amount of rent arrears sought had not been received. The Tribunal noted that under Rule 14 that 14 days must be given for such information. As the Housing and Property Chamber had not received it this time must pass before it can be considered. The Tribunal has no discretion on this matter. It was confirmed with Mr Cacioppo that the information that he had sent that morning had been received now. The CMD will be continued to allow for Rule 14 to be complied with.
 5. Service by Advertisement was undertaken upon the Respondent from 23rd September 2021 for 15 days after the initial publication date.

The Case Management Discussion

6. A CMD was held on 10th September 2021 at 10am by teleconferencing. The Applicant was represented by Mr Gino Cacioppo, the Applicant's father. The Applicant did not attend. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules.
7. Mr Cacioppo had submitted that he was seeking rent arrears amounting to £1171.50 with interest at 8%. This was for the payments due from 25th April

2020 to 8th July 2020. It is noted that the Respondent continued to occupy the Property until 8th July 2020 although his notice period had ended on 25th June 2021.

8. Mr Cacioppo had lodged both inventory pictures and end of tenancy pictures. He did not have receipts for all items claimed as he had done a lot of the work himself. The photographs supported his assertion. The Tribunal had continued the case from the last CMD to allow 14 days for this new matter to be added to the case.

Findings in Fact

9. The parties entered into a Short Assured Tenancy agreement on 25th May 2017 for 6 months until 25th November 2017. The tenancy continued on a month to month basis thereafter requiring two months notice by either party to terminate the tenancy.
10. The Respondent gave notice to end the tenancy on 25th June 2020.
11. The Respondent continued to have occupation of the Property until 8th July 2020.
12. Rent arrears amount to £1171.50.
13. Clause 19.2 of the Short Assured Tenancy agreement states that a rate of interest of 8% per annum will be applied for late payments.
14. The Respondent left the Property in such a poor state that the Applicant's father had to undertake repairs to return the Property to the condition it was in when first let to the Respondent.
15. The Applicant is entitled to recoup the costs of remedying the damage to the Property.

Reasons for Decision

16. The Tribunal was satisfied that this amount was outstanding and legally due to the Applicant. With regard to the 8% interest the Tribunal noted clause 19.2 of the tenancy agreement had detailed this amount of interest. Had this not been the case the Tribunal would have been reluctant to award such a high rate of interest. However, the parties had wilfully contracted into this rate of interest so it was not a matter for the Tribunal.
17. The Tribunal was satisfied it was reasonable, on balance, that the Respondent had left the Property in such a poor condition that it cost the Applicant £882.89 to remedy the damage.

Decision

18. The Applicant is entitled to an order for payment for £1171.50 with interest at 8% per annum from 1st November 2021 and £882.89 which has no interest attached to it.

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.

Gabrielle Miller

1st November 2021

Legal Member/Chair

Date