



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/22/3840

Re: Property at 15 Caroline Street, Elgin, IV30 4DR (“the Property”)

Parties:

Mrs Caroline Hornby, Longhill, Dunbar Street, Lossiemouth, IV31 6RD (“the Applicant”)

Mr Lee Thomson, 15 Caroline Street, Elgin, IV30 4DR (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member) and Melanie Booth (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Order for Payment against the Respondent in the sum of £7200.

This Case Management Discussion concerned an Application dated 25th August 2022 for civil proceedings in respect of a Private Residential Tenancy under Section 16 of the Housing (Scotland) Act 2014. The discussion took place by teleconference.

1. Attendance and Representation

Ian Maltman, solicitor, Allan Black & McCaskie Solicitors, 151 High Street, Elgin, IV30 4DR, attended to represent the Applicant, who was not present.

The Respondent was not present. He was served papers by Sheriff Officers on 20th January 2023.

2. Preliminary Matters

There were no preliminary matters raised other than contact with the Respondent. The Applicant's representative said there had been no recent contact with the Respondent, but he remained in the property.

3. Case Management Discussion

For the Applicant

The Applicant's representative submitted that he sought an Order for Payment in the sum of £7200. He referred to a rent statement lodged on behalf of the Applicant by email dated 8th December 2022. He submitted that the tenancy was a Short Assured Tenancy under Section 33 of the said Act with rent per calendar month set at £550. The tenancy was originally a joint tenancy but there was a separation in 2019 and although there was no written variation of the lease, parties agreed same would continue with the Respondent only. The Applicant's representative said that this change in circumstances coincided with a downturn in the financial position of the Respondent, but he continues to work. The Respondent began missing rental payments and current rent arrears due are £8850.

The Applicant's representative sought an order for £7200 plus interest at 4% per annum from the decision. Interest was not contractual, but it was accepted the amount was not specified in the application.

4. Findings in Fact

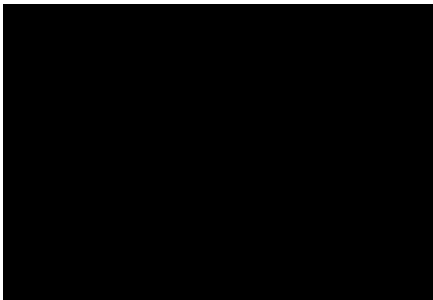
- 1. The Tribunal was satisfied that a decision could be made in the absence of the Respondent at the Case Management Discussion and to do so would be in the interests of the parties, in the interests of justice and having regard to the Overriding objective. The Respondent had been served personally by Sheriff Officer and had not provided any written representations or appeared at any Case Management Discussion.**
- 2. The Applicant and the Respondent entered into a Short Assured Tenancy on 15th April 2016. A copy of the tenancy was lodged.**
- 3. As per the said tenancy the rent per calendar month due by the Respondent to the Applicant was £550.**
- 4. A rent statement lodged on 8th December 2022 showed rent arrears of £8300 due by the Respondent to the Applicants. The Tribunal found in fact based on the evidence before it that the Respondent was liable for rent arrears due by him as at the date of application to the amount of £7200.**
- 5. The Tribunal granted a Payment Order for £7200.**

6. Reasons for Decision

The Tribunal was satisfied that the Applicant was the heritable proprietors of the Property. The Tribunal was satisfied that there was a Tenancy between parties and that on the evidence provided it was appropriate having regard to the overriding objective of the Tribunal to make a determination in the absence of the Respondent. The Tribunal was also satisfied that the respondent was in arrears of rent lawfully due and a Rent Statement for the property was lodged. Rent owed from same amounted to £7200 at the date of the application. Accordingly the Tribunal granted an Order for payment for the sum of £7200 against the Respondent under Section 16 of the Housing (Scotland) Act 2014. The Tribunal considered there was a lack of notice and specification in the application regarding interest as the amount sought was not specified and was discretionary and not contractual. Accordingly, interest was not awarded.

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.



17th February 2023