



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/22/3878

Re: Property at Flat 1, 6 Ashcroft Lane, Edinburgh, EH14 3JT (“the Property”)

Parties:

Places for People Scotland Limited, 1 Hay Avenue, Edinburgh, EH16 4RW (“the Applicant”)

Mr Michael Davanna, Flat 1, 6 Ashcroft Lane, Edinburgh, EH14 3JT (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

This was an application for a payment order dated 21st October 2022 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 originally sought payment of arrears in rental payments in relation to the Property from the Respondent of £18,739.11 together with interest at the rate of 4% per annum from the date of any order, and provided with its application copies of a short assured tenancy agreement and a rent arrears statement.

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 and guidance notes from the Tribunal on 20th December 2022, and the Tribunal was provided with the execution of service.

On 16th February 2023 the Applicant provided an updated rent arrears statement disclosing arrears to 17th February 2023 of £21,538.27 to the Tribunal and which was intimated to the Respondent.

Case Management Discussion

A Case Management Discussion was held at 10:00 on 17th February 2023 by Tele-Conference. The Applicant did not participate, but was represented by Mr Caldwell, solicitor. The Respondent did not participate, nor was he represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

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.

Mr Caldwell requested to amend the sum claimed in the application to the figure of £21,538.27 in terms of Rule 14A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, and sought the Tribunal's permission to shorten the 14 day period for intimation of the amendment upon the Respondent in advance of today's Case Management Discussion in terms of Rule 16A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Tribunal considered in all the circumstances that it would consent to the amendment, and shortened the 14 day period of intimation to the Respondent to 1 day.

The Tribunal was invited by Mr Caldwell with reference to the application and papers to grant an order for payment of the sum of £21,538.27 together with interest at the rate of 4% per annum from the date of the Tribunal's decision until payment in terms of Rule 41A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

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 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 rent arrears statement, and Mr Caldwell’s submissions, and was satisfied that this disclosed an outstanding balance due by the Respondent to the Applicant in respect of rent arrears of £21,538.27 as sought. The monthly rental due in terms of clause 4 of the tenancy agreement is £595.00 per month. Accordingly, the Tribunal made an order for payment of the sum sought.

The Applicant also sought interest on that amount in terms of Rule 41A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

In terms of that rule, the Tribunal may include interest at the rate either stated in the tenancy agreement, or ordered by the Tribunal.

Mr Caldwell confirmed that no rate is specified in the tenancy agreement, and accepted that it was for the Tribunal to order what rate to apply.

In the absence of any guidance on this matter, it appeared to the Tribunal to be just to award interest at a rate representing the investment or borrowing rate of lending banks for short term loans, which is currently approximately 4% per annum, and the Tribunal accordingly did so. Mr Caldwell indicated that he was content with that approach.

Decision

In these circumstances, the Tribunal made an order for payment by the Respondent to the Applicant of the sum of £21,538.27 with interest thereon at the rate of four per cent per annum from the date of the decision of the Tribunal until 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.

N Kinnear

Legal Member

Date: 17/02/2023