



**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/22/3941**

**Re: Property at 89 Fintry Drive, Glasgow, G44 4QA (“the Property”)**

**Parties:**

**Ms Victoria Rowland, Mr Andrew James Turnbull, 35 Riddrie Crescent, Glasgow,  
G33 2QG; UNKNOWN, UNKNOWN (“the Applicant”)**

**Ms Katrina Gallacher, 2/1 34 Raithburn Avenue, Glasgow, G45 9RL (“the  
Respondent”)**

**Tribunal Members:**

**Melanie Barbour (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that it should make an order for payment for the sum of  
SIXTEEN THOUSAND AND NINETY SIX POUNDS FIFTY THREE PENCE  
(£16,096.53) STERLING TOGETHER WITH AN AWARD OF INTEREST OF 3% PER  
ANNUM FROM THE DATE OF THE ORDER**

**Background**

1. An application had been received under Rule 70 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking a payment order against the Respondent.
2. The application contained:-
  - a. a copy of the tenancy agreement; and
  - b. a copy of the rent statement.

3. The Applicant's agent, Mr Chisholm from Clarity Simplicity Limited, Solicitors appeared today, 16 May 2023. There was no appearance by the Respondent. The Respondent had been served with notice of today's case management discussion by sheriff officers on 18 April 2023. As I was satisfied that she had received notice of this case management discussion I was prepared to proceed in her absence.
4. This case management discussion was continued from 15 February 2023. Reference is made to that case management discussion note, including that the the application was continued in order that service of the papers could be carried out on the respondent as she had moved address; and the tribunal agreed to amend the sum sued to £16,096.53.

### Discussion

5. The Applicant's agent asked the tribunal to grant the order for payment for £16,096.53 together with interest at the rate of 4.25% per annum from the date of the order until payment.
6. The agent advised that at today's date the arrears were still £16,096.53. The respondent was aware of the arrears. The respondent had offered to make repayment at the rate of £100 per month but to date had not made any payments. The respondent had vacated the property on 22 December 2022. The applicant was seeking an award of interest at a rate of 4.25% which was the Bank of England Base Rate. The agent submitted that the applicant was entitled to seek such an award in terms of rule 41A of the Tribunal Rules.
7. There was submitted a tenancy agreement and rent statements in support of the application.

### Findings in Fact

8. The Tribunal found the following facts established:-
  - a. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 6 October 2010.
  - b. The tenancy was for the property 89 Fintry Drive, Glasgow.
  - c. The tenant was Katrina Gallacher.
  - d. The landlord was Victoria Rowlands and Andrew Turnbull.
  - e. The Tenancy Agreement provides that the rent for the property is £550 per calendar month.
  - f. Clause 2 under the heading "tenants obligations" was in the following terms "rent: to pay the rent and service charge, four weekly or monthly".

- g. There appeared to be rent arrears outstanding which totalled at least £16,096.53 as at today's date.
- h. The respondent had vacated the property on 22 December 2022.
- i. There was no provision in the tenancy agreement to impose interest on unpaid rent.

### Reasons for Decision

- 9. Section 16 of the Housing (Scotland) Act 2014 provides that the First Tier Tribunal has jurisdiction in relation to civil proceedings arising from assured tenancies. As this tenancy is an assured tenancy I am content that I have jurisdiction to deal with this case.
- 10. The tenancy agreement created obligations between the parties, which included paying rent. The respondent had failed to make payment of her rent. There was submitted a rental statement showing the arrears due. The applicant had also submitted an email from the respondent confirming her new address and (while not confirming the amount of arrears due), offering to repay the arrears at £100 per month and accepting that this was a small amount compared to the size of the arrears. Having regard to the tenancy agreement, rental statement, email from the respondent and oral submission by the applicant's agent, I find that the respondent was in breach of the obligation to pay rent. I find the arrears due.
- 11. The applicant also sought interest on the sum at a rate of 4.25% per annum. He noted that the tenancy agreement contained no provision for interest to be paid, but he submitted that he could seek an award in terms of rule 41A of the Tribunal rules and what he asked for was an award of interest at a rate which reflected the Bank of England Base Rate.
- 12. The terms of rule 41A are that the First Tier Tribunal may include interest when making an order for payment. At a rate either stated in the tenancy agreement or ordered by the First Tier Tribunal and running from the date of the decision.
- 13. Any award of interest in this application is discretionary. I am not bound to apply the Bank of England Base Rate. I have taken into account that this had been a long tenancy of over 12 years and the rent statement showed that the rent had been paid fairly consistently until around 2020. I do not know why the respondent stopped paying her rent at that time, although it would tie in with the covid pandemic. As noted Rule 41A of the tribunal rules 2017 provide that the tribunal may award interest when making an order for payment where the rate is set out in the tenancy agreement or if ordered by the tribunal. There is no reference to the landlord being entitled to impose interest for unpaid rent in the tenancy agreement. The landlord could have included that as a term of the tenancy however she did not do so. It appears from the papers that the

respondent has fairly limited means. She appears to admit the debt, and has made an offer to repay, although she could only afford to pay £100 per month. I note however she has to date made no repayments. A claim for 8% interest was set out in the application, and the applicant's agent today amended that to one for 4.25%. The respondent has had notice of this today's case management discussion and been served with a copy of the application. She has not appeared today. While, I am not prepared to award interest at a rate of 4.25% I will however award interest at a rate of 3% in view of the fact that the sum owed is substantial and the offer to repay that sum (if accepted by the landlord) will take a significant number of years to pay. I note that this sum may be less than the Bank of England base rate, however that factor, is only one factor which I require to take into account. Interest rates fluctuate and I am not persuaded that I should award interest at the base rate having regard to the other factors I have set out above.

14. On the basis of the evidence submitted and having regard to all papers submitted with the application, I consider that I should make an order for the sum sued and award interest at a rate of 3% per annum from the date of the order.

### Decision

15. I grant an order in favour of the Applicant for SIXTEEN THOUSAND AND NINETY SIX POUNDS AND FIFTY THREE PENCE (£16,096.53) STERLING together with interest of 3% per annum from the date of the order against the Respondent.

### **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.**

# M Barbour

**Legal Member/Chair**

16<sup>th</sup> May 2023  
**Date**