



**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/23/0235

Re: Property at 1 Hawthorn Drive, Airdrie, ML6 8AU (“the Property”)

Parties:

**Mr Neagle Cathcart, 2A Westmount Park, Newtonards, County Down, BT23 4BP
 (“the Applicant”)**

**Ms Kelly McColl, Ms Geraldine McCall, 144 Calder Street, Coatbridge, ML5
4QR; 140 Calder Street, Coatbridge, ML5 4QE (“the Respondents”)**

Tribunal Members:

Graham Harding (Legal Member)

Decision (in absence of the Respondents)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Applicant was entitled to an order for payment by
the Respondents to the Applicant in the sum of £1330.79.**

Background

1. By application dated 6 April 2023 the Applicant’s representatives Mrs Marilyn Deans, applied to the Tribunal for an order for payment in respect of alleged rent arrears arising from the First Respondent’s tenancy of the property. The Applicant’s representative submitted a copy of the tenancy agreement and a rent statement in support of the application.
2. By Notice of Acceptance date 27 April 2023, a legal member of the Tribunal with delegated powers accepted the application and a Case Management discussion (“CMD”) was assigned.
3. Intimation of the CMD was served on the Respondents by Sheriff Officers on 22 May 2023.

The Case Management Discussion

4. A CMD was held by teleconference on 21 June 2023. The Applicant did not attend but was represented by Mr John McAuley of Ennova Law, 26 George Square, Edinburgh. The Respondents did not attend nor were they represented. The Tribunal being satisfied that proper intimation of the date and time of the CMD had been given to the Respondents determined to proceed in their absence.
5. Mr McAuley referred the Tribunal to the documents submitted with the application and confirmed that the Applicant was seeking an order for payment in respect of the outstanding rent due amounting to £1330.79.
6. Mr McAuley advised the Tribunal that in terms of Clause 5 of the tenancy agreement interest would run on any unpaid rent at the rate of 4% above the base rate of the Royal Bank of Scotland PLC and that the base rate was currently 4.5%. He acknowledged that in terms of Rule 41A of the Tribunals rules of Procedure that any decision to award interest was at the discretion of the Tribunal.
7. Mr McAuley advised the Tribunal that there was a spelling error in the Second Respondent's surname in the application and that it should be "McColl" and not "McCall" as stated in the application and he asked the Tribunal to allow the application to be amended. The Tribunal noted that the error had been identified by the Sheriff Officers when serving the case papers on the Second Respondent. The Tribunal allowed the amendment.

Findings in Fact

8. The Applicant and the First Respondent entered into a Short Assured Tenancy that commenced on 7 November 2016 at a rent of £525.00 per calendar month.
9. The Second Respondent was a party to the agreement as guarantor for the First Respondents obligations.
10. The tenancy agreement made provision for interest to be paid on any outstanding sums due by the First Respondent to the Applicant at the rate of 4% per annum above the base rate of the Royal bank of Scotland PLC.
11. At the end of the tenancy after the return of the Respondent's deposit to the Applicant the First Respondent owed rent of £1330.79.

Reasons for Decision

12. The Tribunal was satisfied from the documents submitted and the oral submissions at the CMD that the Applicant and the First Respondent entered into a Short Assured Tenancy agreement that commenced on 7 November 2016 at a rent of £525.00 per calendar month. The Tribunal was also satisfied

that at the end of the tenancy after taking account of the deposit the First Respondent's deposit the Applicant was still due to receive £1330.79 in rent.

13. The Tribunal was satisfied from the documents produced that the Respondents had been given proper intimation of the date and time of the CMD and had not submitted any written representations and had not attended. In the circumstances the Applicant was entitled to an order for the sum claimed. Although the tenancy agreement made provision for interest to be applied at the rate of 4% above the base rate of the Royal Bank of Scotland the Tribunal considered that this was excessive and that interest should run at the rate of 4% per annum from the date of the decision until payment.

Decision

14 The Tribunal finds the Applicant entitled to an order for payment by the Respondent to the Applicant in the sum of £1330.79 with interest at the rate of 4% per annum from the date of the decision 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.

G Harding

21 June 2023

Legal Member/Chair

Date