



**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:

**Re: Property at 2nd Floor Left, 12 Factory Road, Kirkcaldy, KY1 2NH
("the Property")**

Parties:

**Mr John Taggerty, 32 Beechwood Drive, Glenrothes, Fife, KY7 6GE, ("the
Applicant")**

**Ms Sarah Houston, 2nd Floor Left, 12 Factory Road, Kirkcaldy, KY1 2NH ("the
Respondent")**

**Tribunal Members: Gillian Buchanan, Legal Member
Ahsan Khan, Ordinary member**

Decision (in absence of the Respondent)

At the Case Management Discussion ("CMD"), which took place by telephone conference on 28 August 2023, the Applicant was present and was represented by Ms Chloe Herd of Clarity Simplicity Limited. The Respondent was neither present nor represented and had lodged no written representations.

The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules") had been satisfied relative to the Respondent having received notice of the CMD and determined to proceed in the absence of the Respondent in terms of Rule 29.

The CMD was in respect of this matter and the related case bearing reference FTS/HPC/EV/23/0700.

Prior to the CMD the Tribunal received the following additional representations from the Applicant's representative:-

- i. Email dated 2 June 2023; and
- ii. Email dated 21 August 2023.

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

Background

The Tribunal noted the following background:-

- i. The Applicant leased the Property to the Respondent in terms of a Tenancy Agreement that commenced on 8 April 2015.
- ii. The rent payable in terms of the Tenancy Agreement is £450 per month.
- iii. The Tenancy Agreement could not be produced.
- iv. On 5 October 2021 on the instructions of the Applicant, Sheriff Officers served on the Respondent a Notice to Quit dated 29 September 2021.
- v. On 25 November 2022 on the instructions of the Applicant, Sheriff Officers served on the Respondent a Form AT6 under and in terms of Section 19 of the Housing (Scotland) Act 1988 (“the 1988 Act”) giving the Respondent notice of his intention to raise proceedings to recover possession of the Property no earlier than 25 January 2023 on account of rent arrears accrued. The Form AT6 proceeded on the basis of rent arrears then totalling £3,439 and by reference to Grounds 8A, 11 and 12 of Part 1 of Schedule 5 of the 1988 Act.
- vi. The Applicant’s agent issued a pre-action protocol letter on 26 January 2023.
- vii. The Applicant’s agent has served on Fife Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

The CMD

At the CMD Ms Herd for the Applicant and the Applicant made the following representations:-

- i. The rent arrears balance as at the CMD is £6,372.61 up to and including July 2023. The August rental payment is now also due.
- ii. No payments have been made since January 2023.
- iii. The Respondent was previously in receipt of Universal Credit which was paid to her in full. The Applicant arranged for the housing costs element of the Universal Credit to be paid to him directly.
- iv. The Respondent used to pay the rent in full She then stopped paying the shortfall between the Universal Credit paid and the rent due.
- v. The Respondent is believed to still occupy the Property. The Applicant spoke to her through the door on 12 June 2023. The Applicant attended at the Property following the Sheriff Officers’ report stating that the Property was empty. She is believed to live in the Property with her adult son.
- vi. The Applicant does not know the Respondent’s circumstances.
- vii. The Respondent has not engaged.
- viii. The Applicant continues to pay the mortgage on the Property at £512.81 per month. He is suffering and continues to suffer loss due to the non-payment of rent.
- ix. The Applicant seeks :-
 - a. To amend the application increase the sum claimed to £6,372.61;
 - b. Thereafter a payment order in a sum of £6,372.61 with interest thereon at 8% per annum from the date of the order until payment.

Findings in Fact

- i. The Applicant leased the Property to the Respondent in terms of a Tenancy Agreement that commenced on 8 April 2015.
- ii. The rent payable in terms of the Tenancy Agreement is £450 per month.
- iii. The rent arrears balance as at the CMD is £6,372.61 up to and including July 2023. The August rental payment is now also due.
- iv. No payments have been made since January 2023.

Reasons for Decision

The Respondent did not submit any representations to the Tribunal and did not attend the CMD. The factual background narrated by the Applicant within the application papers and orally by him and on his behalf at the CMD was not challenged and was accepted by the Tribunal.

In light of the rent arrears having continued to accrue the tribunal allowed the application to be amended to increase the sum claimed to £6,372.61 and thereafter granted a payment order for that amount.

The Tribunal was not prepared to make an order for payment of interest as it could not be established that a contractual interest rate relative to rent arrears had been agreed in terms of the Tenancy Agreement.

Decision

The Tribunal:-

- a. Allowed the application to be amended to increase the sum claimed to £6,372.61; and
- b. Thereafter granted a payment order in a sum of £6,372.61.

The Tribunal refused to award interest.

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.

Gillian Buchanan



Legal Member/Chair

28 August 2023
Date