



**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/21/0107**

**Re: Property at 23 Spruce Park, Ayr, KA7 3PL (“the Property”)**

**Parties:**

**Mr Dale Chalmers, Salzmesser Strasse 20, 8129, Munich, Germany (“the Applicant”)**

**Mr Christopher Cullen, 19 Holmston Drive, Ayr, KA7 3JT (“the Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member) and Mr G Darroch (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted in the sum of £4632.81 with interest thereon at 8%.**

**Background**

1. This is an application received in the period between 14<sup>th</sup> January and 2<sup>nd</sup> February 2021 for an order for payment under Rule 70 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”). The Applicant was seeking an order for payment in the sum of £4913.94 in respect of rent arrears of £4457.56 and interest of £456.38, with interest of 8% thereon. The Applicant’s representative lodged a copy of a tenancy agreement between the parties in respect of the Property that commenced on 28<sup>th</sup> August 2016, together with a rent statement, bank statements and copy email correspondence between the parties.
2. A Case Management Discussion (“CMD”) took place by telephone conference on 25<sup>th</sup> March 2021. The case was continued to a hearing set down for 5<sup>th</sup> May 2021.

3. The CMD note, which notified parties of the date of the hearing, and a Direction were issued to parties on 29<sup>th</sup> March 2021. The Direction required the Respondent to provide a written statement setting out his defence.
4. On 13<sup>th</sup> April 2021, the Housing and Property Chamber (“HPC”) received written representations from the Respondent, whereby he stated that he had carried out repairs to the Property during his tenancy that had increased the value of the Property. It was unclear whether the Respondent was accepting the sum was due, or whether he was claiming a defence to the action. Emails referred to by the Respondent were not included with his representations.
5. On 21<sup>st</sup> April 2021, the Applicant’s representative lodged answers to the Respondent’s representations.
6. By letter dated 26<sup>th</sup> April 2021, the HPC administration wrote to the Respondent inviting him to submit the emails to which he referred, and, in the event that he was admitting the claim, to submit an application for a Time to Pay Direction. No response was received from the Respondent.

### **The Hearing**

7. A hearing took place by telephone conference on 5<sup>th</sup> May 2021. The Applicant was in attendance and was represented by Ms Angela Goldie, Solicitor. The Respondent was not in attendance.
8. The Tribunal considered the terms of Rule 29 of the Rules. The Tribunal determined that the Respondent had been given reasonable notice of the time and date of the Hearing, together with details on joining the telephone conference. The Tribunal determined that the requirements of Rule 24(1) had been satisfied and that it was appropriate to proceed with the application in the absence of the Respondent upon the representations of the Applicant and the material before the Tribunal, which included representations from the Respondent.

### **Preliminary Matter**

9. The Tribunal raised a preliminary matter in that it had recently been discovered that the Applicant’s representative had included details of a second respondent at the time of making the application, however, neither the application nor notice of the hearing had been served on the second respondent. The Tribunal adjourned to allow the Applicant and his representative to consider whether they wished to adjourn the hearing to allow service upon the second respondent.
10. The hearing reconvened and Ms Goldie said the Applicant wished to proceed against the sole cited Respondent, Mr Cullen.

11. Ms Goldie moved for an order for payment in the sum claimed, setting out the facts of the case. It was her submission that the representations made by the Respondent did not disclose a defence to the action.
12. Responding to questions from the Tribunal, the Applicant said that the only agreed works had been to the kitchen. The respondent had offered to fit the kitchen. As a gesture of goodwill, the Applicant had agreed to write off over £700 of arrears, if the Respondent made timeous payment of the next three months' rent. The Respondent did not do so, and the arrears were not written off.
13. Responding to questions regarding the deposit of £575 paid by the Respondent, the Applicant said the deposit was returned to him by Safe Deposit Scotland to cover gardening and redecorating costs at the end of the tenancy.
14. The Applicant said the sum due was now £4632.81, as the Respondent has been making payments of £100 per month.
15. Ms Goldie moved for an award of expenses against the Respondent, stating that he had failed to respond to attempts to reach agreement on the arrears which meant that an application had to be lodged. Consideration of the application had been prolonged due to a spurious defence submitted by the Respondent.
16. The Tribunal adjourned to consider its decision.

### **Findings in Fact**

17.
  - i. Parties entered into a short assured tenancy agreement in respect of the Property that commenced on 28<sup>th</sup> August 2016 with an agreed rent of £575 per month.
  - ii. The tenancy ended on 4<sup>th</sup> September 2020.
  - iii. Rent lawfully due in terms of the tenancy was not paid by the Respondent.
  - iv. The Applicant is entitled to recover rent lawfully due.
  - v. The tenancy agreement provides for the payment of 8% interest on overdue rental payments.
  - vi. The Applicant is entitled to recover interest on overdue rental payments.

## Reasons for Decision

18. The Tribunal took the view that the representations made by the Respondent did not disclose a defence to the action. Rent lawfully due is outstanding and the Applicant is entitled to recover the rent. The tenancy agreement provides at clause 19.2 that 8% interest will be charged on overdue rental payments. The Applicant is entitled to interest on the overdue rental payments.
19. The Tribunal considered the motion for expenses, having regard to Rule 40. The Rules provide that expenses can only be granted due to unreasonable behaviour in the conduct of a case that has put the other party to unnecessary or unreasonable expense. The Tribunal took the view that there was no unreasonable behaviour in the conduct of the case by the Respondent to justify an award of expenses. The Respondent was entitled to state a defence to the application and have the matter considered at a hearing. Although it transpired that there was no defence, the Respondent did not behave unreasonably.

## Decision

20. An order for payment is granted in favour of the Applicant in the sum of £4632.81 with interest thereon at the rate of 8% per annum running from the date of the decision to grant the order 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.**

H. Forbes

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Legal Member/Chair

5<sup>th</sup> May 2021  
Date