



**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/22/0641**

**Re: Property at 20 Heather Gardens, Dundee, DD3 0NX (“the Property”)**

**Parties:**

**Ms Shona Duncan, 4 Holly Road, Dundee, DD5 2LZ (“the Applicant”)**

**Mr Mark Craig, 20 Heather Gardens, Dundee, DD3 0NX (“the Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order in the sum of Five Thousand Four Hundred Pounds Only (£5400.00) be made in favour of the Applicant and against the Respondent with interest at the rate of three per cent per annum from the date of the decision until payment.**

**Background**

1. This application for a payment order was submitted to the Tribunal on 3<sup>rd</sup> March 2022 and accepted on 18<sup>th</sup> March 2022. A case management discussion was fixed for 27<sup>th</sup> May 2022.

**Case Management Discussion**

2. The Applicant did not attend the case management discussion on 27<sup>th</sup> May but was represented by Mr Runciman solicitor of Gilson Gray. There was no appearance by or on behalf of the Respondent. Mr Runciman requested that the Tribunal proceed in his absence. The Tribunal noted that it had sight of a certificate of service of the application and papers by Sheriff officer placing these through the letterbox at the property on 20<sup>th</sup> April 2022. The Tribunal legal member was satisfied that the

Respondent had been given fair notice of the proceedings and that it was appropriate to proceed in his absence.

3.The Tribunal had sight of the application, a tenancy agreement, a rent statement, a Form AT 5, a letter intimating an increase in the sum being requested, confirmation of postal service of this letter on the Respondent and an updated rent statement.

4.The parties along with one other named tenant entered into an assured tenancy agreement at the property with effect from 15<sup>th</sup> October 2017 for a year. The lease continued on a monthly basis after that date and the monthly rent was £675.

5.Mr Runciman was seeking a payment order in the sum of £5400 being unpaid rent due in terms of the lease up to 15<sup>th</sup> May 2022, as he said that no rent had been paid since September 2021.He was also seeking interest on any payment order granted.

6.The tenancy agreement produced had two tenants named on it, the Respondent and one other party. Mr Runciman had no information regarding the second tenant and the application had been made against the Respondent only. The Tribunal legal member requested information regarding the position of the other named tenant as regards the application and any efforts which had been made to recover the rent before applying to the Tribunal for a payment order. A short adjournment was granted to allow enquiries to be made on these points.

7.Mr Runciman later advised the Tribunal that the second named tenant had left the property without properly terminating the lease in the summer of 2021, apparently before the rent arrears started to accrue. Mr Runciman indicated that the Applicant had made efforts to recover the outstanding rent from the Respondent before applying for a payment order, but these efforts had been unsuccessful. The Applicant had chosen to proceed against the Respondent alone and he remained in occupation at the property in terms of the lease. No information was available regarding the Respondent's personal or financial circumstances.

8.The request to increase the sum requested had been intimated by post to the Respondent on around 18<sup>th</sup> May 2022 which was less than the time period required by the Tribunal rules of procedure. The Tribunal Legal member considered the terms of Rule 14A (2) of the Tribunal rules of procedure and the fact that this subsection of the rule allowed the Tribunal to consent to the amendment on such conditions as it saw fit. In terms of the tenancy agreement and the application, the Respondent as a tenant at the property would be aware that he was not paying any rent on an ongoing basis and he had been advised of the amount outstanding as of 15<sup>th</sup> May 2022.The Tribunal legal member took the view that a notice period of 9 days instead of 14 days amounted to fair notice in the circumstances of this application and accordingly allowed the amendment of the sum being requested in terms of Rule 14A(2).

9.The Tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

## **Findings in Fact**

10.The Applicant and Respondent along with another named tenant entered into an assured tenancy at the property with effect from 15<sup>th</sup> October 2017 for a period of a year.

11.The tenancy agreement continued on a monthly basis thereafter and the monthly rent payable is £675 per month.

12.The other tenant left the property in the summer of 2021.

13.The Respondent continues in occupation of the property as a tenant and rent arrears have accrued with effect from 15<sup>th</sup> September 2021.Unpaid rent at the property as of 15<sup>th</sup> May 2022 stands at £5400.

14.The sum of £5400 is lawfully due by the Respondent to the Applicant in relation to rent arrears accrued in terms of the tenancy agreement.

### **Reasons for Decision**

The Tribunal was satisfied that it was appropriate to make an order against the Respondent in the circumstances of accrued rent arrears at the property when he was the only tenant at the property. Interest was requested on the payment order, and this was awarded at the rate of 3% per annum until payment to reflect the use value of the money in terms of current interest rates.

### **Decision**

The Tribunal made a payment order in the sum of Five Thousand Four Hundred Pounds Only (£5400.00) in favour of the Applicant and against the Respondent with interest at the rate of three per cent 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.**

Valerie Bremner

**27.5.22**

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**Legal Member/Chair**

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**Date**