



**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/23/0185

Re: Property at 20 Waverley Park, Mayfield, Dalkeith, EH22 5SH (“the Property”)

Parties:

**Mr Robert McKinven, 106 Church Meadow Road, Rossington, Doncaster, DN11
0YD (“the Applicant”)**

**Miss Hailey Hutchison, 20 Waverley Park, Mayfield, Dalkeith, EH22 5SH (“the
Respondent”)**

Tribunal Members:

Graham Harding (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

**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 Respondent to the Applicant in the sum of £2250.00 with interest at the rate
of 4% per annum from the date of the decision until payment.**

Background

1. By application dated 17 January 2023 the Applicant’s representatives, Clarity Simplicity Ltd, Glasgow, applied to the Tribunal for an order for payment in respect of alleged rent arrears arising from the Respondent’s tenancy of the property. The Applicant’s representatives submitted a copy of the tenancy agreement together with a rent statement and Form AT2 with execution of service in support of the application.

2. By Notice of Acceptance dated 6 February 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 Respondent by Sheriff Officers on 21 April 2023.
4. By email dated 11 May 2023 the Respondent submitted written representations to the Tribunal.
5. By email dated 17 May 2023 the applicant's representatives submitted written representations to the tribunal
6. A CMD assigned for 25 May 2023 required to be postponed and a further CMD assigned.

The Case Management Discussion

7. A CMD was held by teleconference on 5 July 2023. The Applicant was represented by his niece Mrs Maureen Haughton and by Mr Craig Chisholm of the Applicant's representatives. The Respondent did not attend nor was she represented. The Tribunal being satisfied that proper intimation had been given to the Respondent determined to proceed in her absence.
8. Mr Chisholm advised the Tribunal that the rent arrears at the date of the end of the tenancy on 19 June amounted to £3500.00 as detailed in the correspondence of 17 May and asked the Tribunal to grant an order for payment by the Respondent to the Applicant in that sum. The Tribunal referred Mr Chisholm to Rule 14A of the First-tier Tribunal for Scotland Housing and Property chamber (Procedure) Regulations 2017 ("the Rules") and queried if the application to amend the sum claimed had been intimated in accordance with the rule to the Respondent. Mr Chisholm said that he had requested in his email that the tribunal administration pass the information to the Respondent. He confirmed that he had not complied with the terms of the rule but suggested that the Tribunal had a discretion to allow the amendment as the Respondent would have been aware of the level of arrears.
9. Mr Chisholm also asked that the Tribunal apply interest to the order at the rate of 8% per annum. He confirmed that the tenancy agreement made no provision for the payment of interest but submitted that in terms of rule 41A of the Rules the Tribunal could award interest at its discretion. He suggested that given current interest rates and the rate of inflation a figure of 8% per annum was reasonable.

Findings in Fact

10. The parties entered into a Short Assured tenancy that commenced on 1 September 2017 at a rent of £500.00 per calendar month.
11. The tenancy continued from year to year by tacit relocation.
12. Following service of a Notice to Quit on the Respondent on 14 April 2021 a Statutory Assured Tenancy came into force.
13. By virtue of form AT2 served on the Tenant in September 2021 the rent was increased to £750.00 per calendar month with effect from 1 April 2022.
14. The Respondent owed rent of £2250.00 as at 1 January 2023 and this amount was still outstanding at the date of the CMD.

Reasons for Decision

15. The Tribunal was satisfied from the written representations and documents submitted by the Applicant's representatives together with the oral submissions that the parties had entered into a Short Assured Tenancy that had endured from year to year at a rent of £500.00 per month until it was increased in April 2022 to £750.00 per month. The Tribunal noted that the Respondent although she had submitted written representations to the Tribunal had not challenged the sum claimed.
16. The Tribunal was not prepared to allow the amendment of the sum claimed as it had not been properly intimated in terms of Rule 14A to the Respondent. The Tribunal gave the Applicant's representative an opportunity to discuss with Mrs Haughton the option of continuing the CMD in order to intimate the amendment to the Respondent however after a short adjournment Mr Chisholm confirmed he wished an order for the sum originally claimed. The Tribunal was satisfied from the documents produced and the oral submissions that the Applicant was entitled to an order for £2250.00 in respect of the rent due as shown on the rent statement to January 2023.
17. The Tribunal whilst acknowledging that the tenancy agreement was silent on the issue of interest on late payment of rent considered that it would be appropriate in terms of Rule 41A to include interest on the sum awarded given current interest rates but did not consider that 8% would be reasonable and awarded interest at the rate of 4% from the date of the decision until payment.

Decision

18. The Tribunal finds the applicant entitled to an order for payment by the Respondent to the Applicant in the sum of £2250.00 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

Graham Harding
Legal Member/Chair

5 July 2023
Date