

**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/22/1070**

**Re: Property at 188 Laird Street, Dundee, DD3 9PN (“the Property”)**

**Parties:**

**Mr Christopher Airlie Trading as Properties R Us, 17 Arklay Street, Dundee, DD3  
7NJ (“the Applicant”)**

**Ms Kirsten Smith, UNKNOWN, UNKNOWN (“the Respondent”)**

**Tribunal Member:**

**Valerie Bremner (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

**The Tribunal determined that a payment order in the sum of £11500 ( Eleven  
Thousand Five Hundred Pounds) only be made in favour of the Applicant and  
against the Respondent together with interest at the rate of 4.75 % per annum  
until payment is made.**

**The Decision of the Tribunal was unanimous**

**Background**

1.This application for a payment order in terms of Rule 70 of the tribunal rules of procedure was first lodged with the tribunal on 12<sup>th</sup> April 2022 A related application for an eviction order (FTS/HPC/EV/22/2940) was lodged with the tribunal on 17th August 2022.

2.A case management discussion was fixed in respect of both applications for 11th of November 2022, but this was cancelled as sheriff officers had been unable to effect service of the application and related tribunal papers on the Respondent at the property. A case management discussion was fixed for both applications to take place on 28th January 2023 at 10am.

## Case Management Discussion

3. Both applications were served on the Respondent by advertisement in terms of Rule 6A of the tribunal rules of procedure. The Applicant did not attend the case management discussion on 28th January 2023 but was represented by Mr Runciman, solicitor of Gilson Gray solicitors. There was no appearance by or on behalf of the Respondent, but the tribunal was satisfied that it could proceed in her absence given that service by advertisement had taken place in terms of the Tribunal rules.

4. The tribunal had sight of both applications, a paper apart in relation to both applications, a tenancy agreement, a Form AT5, A form AT6, a notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003, an email intimating this notice to the local authority, a consent form authorising the Applicant to raise the applications on behalf of both property owners, a rent statement, pre action protocol letters, and executions of service of the notices served on the Respondent. Some two days or so before the case management discussion a notice to quit, a notice in terms of section 33 of the Housing (Scotland) Act 1988, a track and trace document and a letter sent to the Respondent in February 2021 together with some photographs had also been lodged with the Tribunal by Mr Runciman. The Tribunal also received an up-to-date rent statement for the property on the day of the case management discussion.

5. The parties had entered into an assured tenancy agreement at the property with effect from 15<sup>th</sup> March 2014. This tenancy had continued in the absence of either party giving notice to terminate the agreement. The rent payable in terms of the tenancy is £500 per month and substantial rent arrears had accrued since June 2019, the last time when rent had been paid. As of January 2023, the arrears stand at £23150.56. A payment order was previously granted by the Tribunal in respect of rent arrears accrued between 26<sup>th</sup> May 2018 and 26<sup>th</sup> February 2021.

6. Mr Runciman was seeking a possession order in relation to the property in terms of Grounds 8, 11 and 12 of and a payment order in relation to unpaid rent arrears accrued during the tenancy and not covered by the previous payment order granted. He was seeking interest on the payment order at the rate of 4.75 %, based on clause 2:11 of the tenancy agreement which required the Respondent to pay interest at the rate of 4 % above base lending rate on rent or other money due in terms of the agreement which was more than 3 days in arrears. The tribunal members queried whether the possession order application was necessary if the Respondent was no longer in occupation of the property.

7. Mr Runciman advised that the landlord had received an e-mail from the local council indicating that the tenant had left the property and that the council tax was now in his name. In addition, the Respondent had sent a text to the landlord saying that she had left keys in order to allow him to access the property to effect repairs. The landlord had met the Respondent's 15-year-old son and that child had advised the landlord that the Respondent had left the property. The keys were in the possession of the landlord who had effected entry to the premises in order to have repairs done. The Tribunal was also advised that the Respondent had collected property and the property now appeared empty of her belongings. The Applicant was suffering ongoing financial loss as a result of the rent being unpaid for such a long time.

8. While this information suggested that the Respondent had vacated the property a letter had been received from Dundee Law Centre dated 5th December 2022 indicating that while the Respondent's son did recall speaking to the landlord that it was not appropriate for the landlord to "take the word" of a child regarding whether the

Respondent was still in occupation at the property. The letter also said that text messages forwarded by the Respondent had been sent on the basis that access could be effected for repairs to the property and for no other purposes. Some of the information available to Mr Runciman suggested that the Respondent had left the property but there was conflicting information from Dundee Law Centre on this point. Mr Runciman had phoned the Law Centre a number of times and had made them aware of the date and time of the case management discussion and had been advised by then they were not instructed to attend the case management discussion. Mr Runciman indicated that his client was reluctant to simply take occupation of the property on the basis of the letter from Dundee Law Centre in case the Respondent returned and asked to access the property in order to occupy it. Mr Runciman confirmed that the property did appear empty of possessions.

9. Mr Runciman advised that the circumstances of the Respondent as were known to him, were that the Respondent was thought to be in employment at the start of the tenancy. It was not known if that employment had continued. She was known to have two children, but it was not clear if they had lived with her at the property. A previous payment order had been granted by the tribunal and the current rent arrears stood at a sum in excess of £23000 although a payment order had been granted in 2021 for part of that sum. The sum being sought at the case management discussion was £11,500 plus interest at the rate of 4.75 % in terms of Clause 2:11 of the tenancy agreement. Mr Runciman had requested to amend the sum being sought from the sum being sought in the original application in terms of Rule 14A of the Tribunal rules of procedure. He submitted that the tribunal had discretion to allow such an amendment on whatever conditions it saw fit and pointed out that he had not been able to intimate the request for an increase in the sum being requested to the Respondent as it was not known where she is presently.

10. The Tribunal adjourned to consider its decision in relation to both applications. Tribunal members were concerned that there was conflicting information as to whether the tenant had in fact ceased to occupy the property in response to the Form AT6, albeit after the date when possession was required. The balance of evidence suggested that the Respondent had left the property, and this raised the question of whether a possession order was necessary and the exact amount of any rent arrears which might be lawfully due. The conflicting information as to whether the Respondent regarded the tenancy agreement as ongoing came from Dundee Law Centre and the tribunal had been advised by Mr Runciman that his information was that this body was not instructed to attend the case management discussion and take part in the tribunal proceedings. The tribunal requested that Mr Runciman write to this organisation to confirm if possible what the Respondent's position was in relation to the tenancy and considered that the applications should be continued to await the outcome of that enquiry. The tribunal members were aware that this information may not be able to be obtained however given the conflicting information before the tribunal Mr Runciman was requested to attempt to obtain this information and he agreed to make the enquiry.

11. The Tribunal Legal member indicated at that if Mr Runciman was able to obtain a clear outline of the Respondent's position from Dundee Law centre as regards the tenancy and whether she had regarded this as having ended or if she was still in occupation, then it might be possible to deal with the applications by written

submissions rather than requiring an appearance by Mr Runciman at the next case management discussion.

12. A further case management discussion was fixed for 28<sup>th</sup> March 2023 at 10am.

13. On 9<sup>th</sup> February 2023 the Tribunal received representations from Dundee Law Centre on behalf of the Respondent indicating that the Respondent was still a tenant in terms of a lease entered into in at the property in 2014.. She had been concerned about outstanding repairs which she said were required at the property for a number of years but had not approached the landlord about these due to rent arrears. She had been placed into temporary accommodation in September 2022 due to what she said was the state of repair of the property and it was said that the local authority had been involved in trying to have repairs carried out. The Respondent's position was that she had been in contact with the Applicant to hand over a key for the property for the purpose of repairs. The Respondent's son had gone to the property to collect a parcel and met the Applicant there and confirmed that that the Respondent his mother was living elsewhere at that time. The date of this meeting was not given but it was said that after this the Applicant e mailed the Respondent to ask where she wanted her belongings put. The Respondent clarified with Dundee City Council at that time that her tenancy had not ended. She was given this advice on 29<sup>th</sup> September 2022. The Respondent's position was that she was not opposing an eviction order and she accepted that the rent arrears being sought had accrued and did not oppose a payment order being granted. At no time was it suggested on behalf of the Respondent that a delay or failure in payment of a relevant benefit had caused the rent arrears to accrue during the tenancy.

14. On 12<sup>th</sup> February 2023 the Applicant's representative wrote to the Tribunal requesting that the matter be dealt with without a further hearing given that the Respondent's representative had confirmed that there was no opposition to an eviction order and an acceptance that the rent arrears had accrued, and a payment order was not opposed.

15. The Tribunal issued Directions to parties dated 16<sup>th</sup> March 2023 seeking that the Respondent's representative confirm whether the eviction and payment orders could be considered without a further hearing and seeking representation from both parties on the interest rate sought in the payment order application.

16. The Tribunal received a response from the solicitor at Dundee Law centre representing the Respondent indicating agreement that the application be dealt with without a hearing and indicating that no representations were being made regarding the interest rate being sought in relation to the payment order application. The Applicant's representative responded by setting out the basis on which an interest rate of 4.75 % was being craved.

17. The Tribunal considered that it had sufficient information upon which it could make a decision and that the proceedings had been fair. In terms of Rule 18 of the Tribunal rules of procedure the Tribunal considered that it could make a decision on both applications having regard to such facts as are not disputed by parties and that to do so would not be contrary to the interests of parties who were both represented and had made representations. The case management discussion on 28<sup>th</sup> March 2023 was therefore cancelled as this was no longer necessary.

## **Findings in Fact**

18. The parties entered into an assured tenancy at the property with effect from 15th of March 2014 and this tenancy has continued as neither party has given notice to terminate it.

19. The monthly rent payable in respect of the tenancy agreement is £500 per month payable in advance.

20. The tenancy agreement between the parties at clause 2.11 allows the Applicant to seek interest at 4% above base lending rate on rent more than 3 days in arrears.

21. No rent due in terms of the tenancy has been paid by or on behalf of the Respondent since June 2019 and rent arrears as of January 2023 stand at £23,150.56.

22. A previous payment order was granted by the Tribunal in relation to rent arrears accrued at the property between 26<sup>th</sup> May 2018 and 26<sup>th</sup> February 2021.

23. The Respondent has failed to pay rent which has become lawfully due in terms of the tenancy and rent arrears not covered by the previous payment order granted by the Tribunal as of January 2023 stand at £11,500.

24. The sum of £11,500 is lawfully due by the Respondent to the Applicant in relation to rent arrears accrued in terms of the tenancy since 26<sup>th</sup> February 2021.

### **Reasons for Decision**

25. The tribunal was satisfied that it was appropriate to grant a payment order given the history of rent arrears and the previous payment order which was in place for rent arrears accrued up to February 2021. The request to increase the sum sued for had not been intimated to the Respondent as it was not known where she was living but her solicitor had intimated that the level of rent arrears was accepted. In these circumstances the Tribunal considered it was appropriate to allow the sum requested be amended to £11,500 in terms of Rule 14A of the Tribunal rules of procedure. The tenancy agreement allowed for interest be charged at 4% above base lending rate on rent more than 3 days in arrears. The base lending rate at the time when the application was lodged was 0.75% so the interest rate being sought was the rate of 4.75% until payment. The Tribunal was satisfied that it was appropriate to award interest at that rate when making a payment order in this application.

### **Decision**

The Tribunal granted a payment order in favour of the Applicant and against the Respondent in the sum of £11,500 with interest at the rate of 4.75% per annum until payment.

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.

V Bremner

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Legal Member

28.3.23  
Date