



**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/19/3347**

**Re: Property at 3 South Park Grove, Hamilton, ML3 6QG (“the Property”)**

**Parties:**

**Mr Grant Scholefield, Evolve, Larkhall, Lanarkshire, ML9 2YP (“the Applicant”)**

**Miss Stephanie Walker, 3 South Park Grove, Hamilton, ML3 6QG (“the Respondent”)**

**Tribunal Members:**

**Sarah O'Neill (Legal Member)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment by the respondent of the sum of £4993.40 should be granted in favour of the applicant with interest thereon at the rate of 5.75 % per annum running from the date of this decision until payment.**

## **Background**

1. An application was received on 17 October 2019 for a payment order brought in terms of rule 70 (Application for civil proceedings in relation to an assured tenancy under the Housing (Scotland) Act 1988) of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”).
2. The applicant was seeking payment of rent arrears of £4993.40 from the respondent in relation to the property, being the amount of arrears outstanding as at the date of the application, together with contractual interest as provided for in the tenancy agreement.
3. The application included copies of the tenancy agreement and a rent statement showing the rent outstanding up until October 2019.

4. Notice of the case management discussion (CMD) scheduled for 17 December 2019, together with the application papers and guidance notes, was served on the respondent by sheriff officers on behalf of the tribunal on 15 November 2019.
5. No written representations or time to pay application were received from the respondent prior to the CMD.

### **The Case Management Discussion**

6. A CMD was held on 17 December 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The applicant was represented by Mr Adam de Ste Croix, solicitor, Harper MacLeod LLP, who gave evidence on his behalf. The respondent was not present or represented.
7. The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a case management discussion had been duly complied with. The tribunal delayed the start of the discussion by 10 minutes, in case the respondent had been detained. She did not appear, however, and no telephone calls or messages had been received from her. The tribunal therefore proceeded with the CMD in the absence of the respondent.
8. Mr De Ste Croix on behalf of the applicant referred the tribunal to the rent statement which had been lodged in support of the application. He told the tribunal that the respondent was still resident in the property, and that eviction proceedings had not yet been raised against her. He confirmed that the applicant was seeking the sum of £4993.40 as stated in the application, together with contractual interest at 5.75%, as provided for in Clause Eighth of the tenancy agreement.
9. The tribunal chairperson queried the figures in the rent statement before the tribunal, which did not appear to add up to the sum sought. She noted that there was a letter to the respondent from the applicant's solicitor dated 9 September 2019, notifying her that the outstanding amount of rent arrears due was £2770.65, representing five months' rent arrears totalling £2620 plus contractual interest. There was a further letter from Mr de St Croix to the respondent dated 12 November 2019, notifying her that the total sum outstanding was £4993.40. The tribunal chairperson noted that this seemed to be a significant increase over a two month period. Mr de Ste Croix stated that there had been some errors in the previous rent statements, and that this was in fact the correct sum due. This was the sum shown on the rent account provided with the application, but how this sum was calculated was not clear. Following some further clarification from the applicant's solicitor, while the calculation methods used remained slightly unclear, the tribunal accepted that the respondent owed at least that sum in rent arrears.

## **Findings in Fact**

10. The tribunal made the following findings in fact:

- There was a short assured tenancy in place between the parties.
- The applicant was the landlord in terms of the short assured tenancy agreement between the parties which commenced on 30 March 2017. The title deed for the property showed that he owned the property jointly with Mrs Christine Scholefield. The tribunal had received written confirmation from Mrs Scholefield that she was content with the application proceeding in the applicant's sole name.
- The rent due under the tenancy agreement was £524 per calendar month payable monthly, two months in advance.
- The tenancy agreement provided at Clause Eighth that if the rent due or any part remained unpaid for a period seven days from the date it fell due, the landlord was entitled to charge interest at 5% per annum above the base rate at the Clydesdale Bank.
- As at the date of the CMD, the respondent owed the applicant the sum of £4993.40 in rental payments.

## **Reasons for Decision**

11. Having considered the evidence before it, and the representations made by the applicant's solicitor, the tribunal was satisfied that the respondent owed the sum of £4993.40 to the applicant. The tribunal therefore decided to make an order for payment by the respondent to the applicant of that sum.
12. The tribunal also considered the applicant's request for contractual interest of 5.75% per annum to be added to the sum payable from the date the rent became due until payment. The tribunal noted that the tenancy agreement provided at clause eighth that interest was payable on unpaid rent at five percent per annum above the base rate of the Clydesdale Bank. The applicant's solicitor noted that the claim for interest had been included in the application, and that the respondent had been notified of this in the letter of 9 September 2019.
13. The applicant's solicitor submitted that contractual interest was payable in terms of the tenancy agreement, and was a separate matter from judicial interest granted from the date of any order. He said that he was unable to provide a figure for the contractual interest due, as the rent arrears had not yet been paid.

14. The tribunal chairperson determined that the tribunal did not have power to grant contractual interest from a date prior to the date of its decision. In terms of rule 41A of the 2017 rules, the tribunal may include interest when making an order for payment. Any such interest is to be at the rate either a) stated in the relevant tenancy agreement or b) ordered by the tribunal, and runs from the date of the tribunal's decision.
15. The tribunal chairperson adjourned the CMD briefly to allow the applicant's solicitor to consider whether he might wish to request an adjournment in order to submit an amendment request to amend the sum claimed to include contractual interest up to the date of the CMD.
16. Having taken instructions from his client, Mr de Ste Croix confirmed that he did not wish to seek such an adjournment. He asked that if the tribunal was not minded to grant contractual interest in addition to the arrears, that it grant interest on the sum due at the judicial rate of interest of 8% from the date of the decision. The tribunal chairperson noted that there was no statutory basis for the tribunal to grant interest at the judicial interest rate of 8%, which applies in the sheriff court.
17. The tribunal therefore decided to grant interest from the date of decision at the contractual rate of interest of 5.75%, in terms of rule 41A (2) (a) of the 2017 rules.

## Decision

The tribunal grants an order for payment by the respondent to the applicant for the sum of £4993.40 with interest thereon at the rate of five and three quarter per cent (5.75%) per annum running from the date of this 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.

**Sarah O'Neill**

Legal Member/Chair

Date

17/12/19