



**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/18/2828

Re: Property at 5 Salton Crescent, Dundee, DD4 0HY (“the Property”)

Parties:

Mrs Evelyn Gdula, 7 Old Mill Lane, Uddingstone, G71 7DP (“the Applicant”)

Ms Jeanne Rooney, 5 Salton Crescent, Dundee, DD4 0HY (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment of £1,661,71 by the Respondent for rent arrears accrued.

Background:

The application was made on 15 October 2018 by the Applicant’s representatives Clarity Simplicity Ltd. The application asked for a payment order to be made for the sum of £2,664.72 for unpaid rent and 8% interest per annum from date of service to date of payment. Attached to the application were the Tenancy Agreement, Notice to quit dated 6 August 2018 with service of execution, AT6 dated 14 September 2018 with service of execution on 17 September 2018, S 11 Notice to Dundee City Council, statement of arrears up to and including 1 October 2018 and bank statements of the Applicant from 1 February 2018 to 5 October 2018.

A Case Management Discussion (CMD) was scheduled for 31 January 2019 and both parties advised of the date, time and venue. The Respondent was advised that that the Tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application.

Representations were received from the Respondent’s legal representative Ms Menzies of the Dundee North Law Centre on 30 January 2019. Bank statements from 2 January 2018 to 11 January 2019 together with further screenshots of payments made on 18 January 2019, 23 January 2019 were submitted on behalf of Respondent together with a Schedule of Payments due and made by Respondent from 1 April 2018 to 23 January 2019.

The documents are referred to for their terms and held to be incorporated herein.

The Case Management Discussion

The Applicant did not attend but was represented by Ms Oshodi from Clarity Simplicity Ltd. The Respondent attended together with her legal representative Ms Menzies from Dundee North Law Centre. Ms Menzies provided a further screenshot of a payment made on 30 January 2019. After a short adjournment Ms Oshodi confirmed that her client had received said payment and agreed that the sum outstanding on 31 January 2019 is £1,661.71. This was also agreed by the Respondent and her solicitor, who did not oppose an order to be granted.

With regard to the claim for interest at 8% per annum Ms Oshodi was asked to refer the Tribunal to any interest provisions in the tenancy agreement. It was accepted by Ms Oshodi that no interest provisions are included in the tenancy agreement.

The Respondent confirmed she was still residing at the property.

As reference was made in the written representations to an eviction order having been applied for the Tribunal clarified with the parties that the only case to be dealt with at the time was the payment order application. The Applicant's solicitor stated that the eviction action had been decided and is currently under appeal.

Findings in Fact:

- 1. The parties entered into an Assured Tenancy for the property with a start date of 1 July 2017 (Clause 4) and a monthly rent of £650 payable in advance (Clause5).**
- 2. The rent was increased to £700 per month as of 1 January 2018.**
- 3. As per the rent statement lodged by the Applicant, at the time the application was made the arrears were £2,664.72.**
- 4. As per the payment schedule lodged by the Respondent together with the additional payment proof for payments made after 29 January 2019 the arrears at the time of the Case Management Discussion on 31 January 2019 are £1,661.71.**
- 5. The Tenancy Agreement contains no provision for payment of interest on rent arrears.**

Reasons for Decision

The Tribunal considered that the facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

- (c)raising with parties any issues it requires to be addressed;
 - (d)discussing what witnesses, documents and other evidence will be required;
 - (e)discussing whether or not a hearing is required; and
 - (f)discussing an application to recall a decision.
- (4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.
Power to determine the proceedings without a hearing

However, in terms of Rule 18 of the Rules of Procedure:

- 18.—(1) Subject to paragraph (2), the First-tier Tribunal—
- (a)may make a decision without a hearing if the First-tier Tribunal considers that—
 - (i)having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
 - (ii)to do so will not be contrary to the interests of the parties; and
 - (b)must make a decision without a hearing where the decision relates to—
 - (i)correcting; or
 - (ii)reviewing on a point of law,
 a decision made by the First-tier Tribunal.
- (2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

The Respondent did not dispute that arrears of £1,661.71 are outstanding on 31 January 2019. There was no opposition to the order being granted. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case.

In terms of the current legislation the Tribunal does not have the power to grant interest unless there is a contractual provision for interest in the tenancy agreement. This is not the case here. Therefor no order for interest is made.

Decision

The Tribunal grants an order for payment of the sum of £1,661.71

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.

P Hennig-McFatrige

Legal Member/Chair

81.1.19

Date