



**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/22/0247**

**Re: Property at 96 Melrose Road, Cumbernauld, G67 4BA (“the Property”)**

**Parties:**

**Mr Tom Russell, 16 Carrick Road, Bishopton, Renfrewshire, PA7 5DY (“the Applicant”)**

**Mr Mitchell Kerr, 96 Melrose Road, Cumbernauld, G67 4BA and Mrs Mechelle Reilly, Glencairn Road, Cumbernauld, G67 3EN (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and made an Order against the First-named Respondent as Principal Debtor and the Second-named Respondent as Guarantor for Payment to the Applicant of the sum of £206. The Applicant’s request for interest on the principal sum and for late payment charges was refused.**

**Background**

By application dated 25 January 2022, the Applicant sought an Order for Payment in respect of unpaid rent that had become lawfully due by the Respondent. The sum sought was £850.

The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties commencing on 22 March 2018 at a rent of £425 per month and a Rent Statement showing arrears as at 22 January 2022 of £850. The Tenancy Agreement was signed by the Second-named Respondent as Guarantor and stated that she agreed to pay on demand and in full any overdue rent or other monies lawfully due under the Agreement. It also stated that interest on late payment of rent may be charged by the landlord at eight per cent per year from the date on which the rent is due until payment is made and that if the tenant fails to pay the rent

(or any part thereof) within seven days of the date on which it fell due and the landlord requires to issue a reminder or reminders, the tenant will pay £25 plus VAT per reminder. An updated Rent Statement indicated that arrears as at 22 March were £700, the sum of £1,000 having been received on 28 February 2022.

On 29 March 2022, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 19 April 2022. The Respondent did not make any written representations to the Tribunal.

### **Case Management Discussion**

A Case Management Discussion was held on the morning of 16 May 2022. The Applicant was represented by Ms Heather Fraser, Property Manager of The Property Store Ek Ltd, East Kilbride. The Respondent was not present or represented. Ms Fraser told the Tribunal that the arrears were now £206. She said that there had been communication with the First-named Respondent and the arrears had been reduced, but that the Applicant still wished an Order for Payment, as the pattern of payment had been so erratic, and the monthly rent had not been paid in full and on time since September 2021. She added that the Second-named Respondent, the Guarantor had never responded to correspondence.

### **Reasons for Decision**

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to decide the application without a Hearing.

The Tribunal was satisfied that the principal amount sought had become lawfully due by the First-named Respondent to the Applicant and that the terms of the Tenancy Agreement meant that the Second-named Respondent, as a Guarantor, was also liable for the overdue rent.

The Tribunal found no indication in the Rent Statements or other correspondence available to it that the Applicant has ever indicated to the Respondent that he intends to charge interest on unpaid rent. No late payment charges have ever been debited to the rent account. The Tribunal was not prepared to include in its Order any sums in respect of these.

### **Decision**

The Tribunal determined that the application should be decided without a Hearing and made an Order for Payment to the Applicant by the First-named Respondent as Tenant and the Second-named Respondent as Guarantor of the sum of £206. The Applicant's request for interest on the principal sum and for late payment charges was refused.

### **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 Clark

---

Legal Member/Chair

16 May 2022  
Date