



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 16 Housing (Scotland) Act  
2014.**

**Chamber Ref: FTS/HPC/CV/18/2022**

**Re: Property at 3/1, 91 Grovepark Street, Glasgow, G20 7NZ (“the Property”)**

**Parties:**

**Lowther Homes Limited, 25 Cochrane Street, Glasgow, G1 1HL (“the Applicant”)**

**Mr Brian Shonna, 3/1, 91 Grovepark Street, Glasgow, G20 7NZ (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £3977.34 together with interest at the rate of 2.75% per annum from 7 August 2018 should be made in favour of the Applicant.**

**Background**

1. By application received on 7 August 2018 the Applicant applied to the Tribunal for an order for payment against the Respondent. The Applicant stated that the Respondent owed the sum of £3977.34 in unpaid rent. A number of documents were lodged with the application including copy short assured tenancy agreement and rent statement. An application under tribunal reference FTS/HPC/EV/18/2021 for recovery of possession of the property was also lodged with the application.
2. On 7 September 2018 a copy of the application with supporting documentation and a letter notifying the Respondent that a case management discussion (“CMD”) had been scheduled for 27 September 2018 at 11.30am

were served on the Respondent by Sheriff Officer.

3. The case called before the Legal member for a CMD on 27 September 2018 at 11.30am. The Applicant was represented by Mr David Adams, solicitor. There was no appearance by or on behalf of the Respondent. No written representations were received from either party in advance of the CMD.

### **Case Management Discussion**

4. Mr Adams provided the Legal member with an updated rent account showing an increased balance of £4587.34 as at 13 September 2018. He advised that he had submitted a request to the Tribunal to amend the sum claimed to reflect the current balance. Enquiries were made which established that, although the request had been received by the Tribunal administration, it had not been intimated to the Respondent, who was therefore unaware of the request. Mr Adams advised the Legal Member that he wished to proceed with the CMD and seek an order for payment in the sum originally claimed rather than continue the case for intimation of the request to be made. He confirmed that no payments have been made to the rent account since May 2018.
5. The Legal Member noted that the application sought payment of the sum claimed together with interest at 8% per annum, being the judicial rate of interest. Mr Adams confirmed that he was seeking interest at this rate, failing which at the contractual rate of 2% above the base rate of the Royal Bank of Scotland in terms of the tenancy agreement. Mr Adams advised that although he had been unsuccessful in previous cases before the Tribunal in relation to judicial interest he had been awarded the contractual rate, as the tenancy agreement makes specific provision for same in relation to unpaid rent. He provided the Legal member with a document from the Royal Bank of Scotland confirming the current base rate to be 0.75%.
6. The Legal member proceeded to consider the application.

### **Findings in Fact**

7. The Applicant is the owner and landlord of the property.
8. The Respondent is the tenant of the property.
9. The Respondent is due to pay rent to the Applicant at the rate of £610 per month.
10. The Respondent has incurred rent arrears in the sum of £3977.34. This sum is due and owing to the Applicant.

## Reasons for decision

11. The Legal Member is satisfied from the documentation lodged with the application and the submission made on behalf of the Applicant that the sum of £3977.34 is due and that an order for payment should be made.
12. The Legal Member considered the issue of interest. The Tribunal's jurisdiction in relation to rent arrears derives from Section 16 of the Act which states that " (1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier tribunal - ... (c ) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988". The sums claimed by the Applicant relate to rent due in terms just such a tenancy. However, the provisions of the 2014 Act do not confer on the Tribunal the power to apply interest at the judicial rate. The Sheriff's power to do so is contained within the Section 4 of the Administration of Justice Act 1972 and various Acts of Sederunt, which do not appear to apply to the Tribunal. Mr Adams did not refer the Legal member to any authorities which suggest otherwise. The Legal member therefore refused the application insofar as it relates to judicial interest.
13. The Legal member considered the terms of the tenancy agreement which was lodged with the application. Clause 4.3 states "rent arrears will be deemed to be in breach of this contract and will result in the termination of the agreement unless corrective action has been agreed with the landlords or its agent and honoured within the agreed timescale. Interest will be charged on late payment of rent at an annual rate of 2% above the base rate of the Royal Bank of Scotland from time to time". The Legal Member is satisfied that in terms of the tenancy agreement the Applicant is entitled to interest at the rate of 2.75% on the unpaid rent. Furthermore, as the contractual interest relates to unpaid rent in terms of a short assured tenancy under the 1988 Act, the Tribunal is entitled to award such interest in terms of Section 16 of the 2014 Act. Lastly the Tribunal notes that, as the rate of 2.75% is less than the 8% sought in the application which was intimated to the Respondent, there is no prejudice to the Respondent in terms of fair notice.
14. Accordingly, the legal Member is satisfied that an order for payment should be made in the sum of £3977.34 together with interest at the reduced rate of 2.75% from the date the application was lodged with the Tribunal.

## Decision

15. The Legal Member determines that an order for payment should be made in favour of the Applicant in the sum of £3977.34 with interest at the rate of 2.75% per annum from 7 August 2018.

