

Housing and Property Chamber
First-tier Tribunal for Scotland



**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/19/3337

**Re: Property at 29 Anderson Drive, Newton Mearns, Glasgow, G77 6UR (“the
Property”)**

Parties:

**Mr Gerald Mann and Mrs Elaine Mann, 464 Clarkston Road, Glasgow, G44 3QE
 (“the Applicants”)**

**TC Young Solicitors, 7 West George Street, Glasgow, G2 1BA (“the Applicants’
Representative”); and**

**Ms Carolanne Brady, 29 Anderson Drive, Newton Mearns, Glasgow, G77 6UR
 (“the Respondent”)**

Tribunal Member:

G McWilliams- Legal Member

Decision in absence of the Respondent

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that**

Background

1. This is an Application for a payment order dated 17th October 2019 brought in terms of Rule 70 (Application for civil proceedings in relation to an assured tenancy under the 1988 Act) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the 2017 Regulations”).
2. The Applicants sought payment of arrears in rental payments of £1132.36, and contractual interest, in terms of Clause 5.1 of the parties’ Short Assured

Tenancy Agreement, of £91.36, total £1223.72, from the Respondent in the Application. They provided, with their Application copies of the parties' Short Assured Tenancy Agreement, and Statements of Rent Arrears and Interest Accrued.

3. The Short Assured Tenancy Agreement had been correctly and validly prepared in terms of the provisions of the Housing (Scotland) Act 1988, and the procedures set out in that Act had been correctly followed and applied.
4. The Respondent had been validly served by Sheriff Officers with the Notification, Application papers and Guidance Notes from the Tribunal on 20th November 2019 and the Tribunal was provided with the Execution of Service.
5. The Applicants applied to amend the order for payment sought to the sum of £2031.61 in their Representative's email sent to the Tribunal on 26th November 2019. The Applicants' Representative intimated the application to amend the order sought to the Respondent by recorded delivery post on 26th November 2019. The application was also intimated to the Respondent by the Tribunal in their letter to her dated 29th November 2019.

Case Management Discussion

6. A Case Management Discussion ("CMD") was held on 18th December 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicants were represented by Ms K. Morrison of TC Young Solicitors, Glasgow, the Applicants' Representative. The Respondent did not appear and was not represented. The Applicants' representative Ms Morrison stated that the Respondent was in arrears of rent and interest in the sum of £1615.18. She submitted that, following the lodging of the Application, rent payments of £600.00 had become due on 29th October 2019 and 29th November 2019 and that the Applicants had received payments of Housing Benefit, of £416.91 and £403.46 on 29th October 2019 and 28th November 2019 respectively. She explained that the Applicants had also added further rent arrears of £11.83 as Housing Benefit in the sum of £403.46, and not £415.29, as stated in the Statement of Rent Arrears lodged with the Application, had in fact been received by the Applicants on 29th August 2019. Ms Morrison submitted that the balance of the rent arrears owing was therefore £1523.82 and that the Applicants were also entitled to recover the interest sought in the Application, of £91.36, in terms of Clause 5.1 of the parties' Short Assured Tenancy Agreement. She submitted that the application to amend the payment order sought, to the sum of £2031.61, had been successfully intimated to the Respondent, who had uplifted and signed for the Representative's letter of 26th November 2019, on 28th November 2019. She stated that further interest, in a nominal amount had become due, but that the Applicants did not seek to include this in the payment order sought. Ms Morrison asked the Tribunal to make an order for payment by the Respondent to the Applicants of the sum of £1615.18.

Statement of Reasons

7. Section 16 of the Housing (Scotland) Act 2014 provides as follows:

“16. Regulated and assured tenancies etc.

(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 -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3) Part 1 of schedule 1 makes minor and consequential amendments.”

8. Accordingly, the Tribunal now has jurisdiction in relation to claims by landlords (such as the Applicants) for payment of unpaid rental against a tenant (such as the Respondent) under a short assured tenancy such as this.

9. The Tribunal considered the terms of the Short Assured Tenancy Agreement and the Statements of Rent Arrears and Interest Accrued and was satisfied that these papers established that there were monies due to the Applicants, at the date of the Application, namely 17th October 2019, in the total sum sought of £1223.72. The Tribunal were further satisfied that the Applicants' Representative had successfully intimated the Applicants' application to amend the payment order sought, and had provided the Tribunal with a clear explanation of the balance of rent arrears and interest now owing, of £1615.18. The Tribunal also took account of the fact that the Respondent had not lodged any representations in respect of the original Application, and the subsequent application to amend the payment order sought, and also had not attended at the CMD, to contradict the Applicants. Accordingly, the Tribunal, dealing with the proceedings justly, made an order for payment of the sum sought of £1615.18.

10. The Tribunal did not make any award of expenses. The Respondent had not engaged in the current proceedings and therefore the criteria in Rule 40 in the 2017 Regulations were not satisfied.

Decision

11. Accordingly, the Tribunal makes an order for payment by the Respondent to the Applicant of the sum of £1615.18.

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 McWilliams

18th December 2019

Legal Member

Date