



**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/20/0592

Re: Property at 7 Thorter Way, Dundee, DD1 3DF (“the Property”)

Parties:

**Christopher Airlie, trading as Airlie Properties, 17 Arklay Street, Dundee, DD3
7NJ (“the Applicant”)**

Mrs Natasha MacDonald, 7 Thorter Way, Dundee, DD1 3DF (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision (in absence of the Respondent)

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

Background

This is an application for a payment order dated 18th February 2020 and 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 Applicant seeks payment of arrears in rental payments of £18,278.75 with interest thereon in relation to the Property from the Respondent, and provided with his application copies of a short assured tenancy agreement and a rent arrears statement.

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.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 26th June 2020, and the Tribunal was provided with the execution of service.

By e-mail to the Tribunal dated 6th August 2020, the Applicant's representative indicated that the Applicant understood that the Respondent's husband, Mr David MacDonald, who was a Respondent in this application, no longer resided at the Property and had not signed the lease agreement. As a result, the Applicant invited the Tribunal to remove him from the proceedings.

Case Management Discussion

A Case Management Discussion was held at 14.00 on 15th September 2020 by Tele-Conference. The Applicant did not participate, but was represented by Mrs Royle, solicitor. The Respondent did not participate, nor was she represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Tribunal also made an order removing Mr David MacDonald as a party to the proceedings in terms of Rule 32 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Tribunal was invited by Mrs Royle with reference to the application and papers to grant an order for payment of the sum of £18,278.75 with interest thereon. Mrs Royle confirmed that this sum remains outstanding as of today's date.

Statement of Reasons

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.”

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

The Tribunal considered the terms of the short assured tenancy agreement, the rent arrears statement, and Mrs Royle’s submissions, and was satisfied that this disclosed an outstanding balance due by the Respondent to the Applicant in respect of rent arrears to the date of this application of £18,278.75. The lease agreement provides that rent of £850.00 per month is payable in advance. Accordingly, the Tribunal shall make an order for payment of the sum sought.

The Applicant also seeks interest on that amount in terms of Rule 41A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

In terms of that rule, the Tribunal may include interest at the rate either stated in the tenancy agreement, or ordered by the Tribunal.

Mrs Royle submitted that it is for the Tribunal to order what rate to apply.

In the absence of any guidance on this matter, it appears to the Tribunal to be just to award interest at a rate representing the investment or borrowing rate of lending banks for short term loans, which is currently approximately 3% per annum, and the Tribunal will accordingly do so. Mrs Royle indicated that she was content with that approach.

Decision

In these circumstances, the Tribunal will make an order for payment by the Respondent to the Applicant of the sum of £18,278.75 with interest thereon at the rate of three per cent per annum from the date of the decision of the Tribunal 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.

Neil Kinnear

15/09/2020

Legal Member/Chair

Date