



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber)**

**Chamber Ref: FTS/HPC/CV/19/0048**

**Re: Property at 21/1 West Craigs Crescent, Edinburgh, EH12 8NA (“the Property”)**

**Parties:**

**Mr Ronald Robinson, Mrs Glenda Holman, 21 Gogarloch Bank, Edinburgh, EH12 9LA; 43 Chuckethall Road, Livingston, EH54 8FB (“the Applicants”)**

**Mr Tols Femi Ogunrinade, Mrs Wendy Aganwa Ogunrinade, 21/1 West Craigs Crescent, Edinburgh, EH12 8NA (“the Respondents”)**

**Representation:**

**Applicants: Adam Gardiner & Caitlin Connolly, Messrs Lindsays, Edinburgh**

**Tribunal Members:**

**Virgil Crawford (Legal Member)**

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

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

**BACKGROUND**

1. By lease dated 1 December 2013 the Applicants let the Property to the Respondents;
2. The rent provided for in the lease was £600.00 per calendar month. The lease contained a clause permitting increases in rent after 9 August 2013;
3. The Respondents fell in to arrears of rent and the Applicants applied to the Tribunal for an order for payment. In the application to the Tribunal it was stated that the rent was £750.00 per calendar month;
4. At the time of the application the arrears amounted to £5,225.00. Subsequently, however, the Respondents made part payment of the arrears. The Respondents also vacated the Property and £600.00 which had been

- paid as a deposit was released by the Tenancy Deposit Scheme, paid to the Applicants and applied to reduce the outstanding rent arrears;
5. As at the date of the Case Management Discussion the arrears outstanding amounted to £4,362.06;
  6. The Tribunal was not initially provided with any information nor documentation to evidence the fact that the rent had been increased. After making enquiry, however, the Applicant's solicitors provided copy receipts for payment of rent during 2017 which confirmed rent of £750.00 per month and also a copy agreement signed by the Respondents in which they accepted the outstanding amount claimed and agreed to make payment of it;
  7. A case Management Discussion was originally fixed for 1 April 2019. This was postponed in advance at the request of the Applicants as the Parties were in discussion with a view to agreeing matters between themselves;
  8. A further Case management Discussion assigned for 15 May 2019 was postponed by the Tribunal as the Respondents had moved address and the Tribunal was unable to intimate details of the Case management Discussion to them;
  9. The current Case Management Discussion was assigned for 5 July 2019 and proceeded;

## **THE CASE MANAGEMENT DISCUSSION**

10. The Applicants were not present at the Case Management Discussion but were represented by their solicitors, Mr A Gardiner and Miss C Connolly of Messrs Lindsays, Edinburgh;
11. The Respondents were not present at the Case Management Discussion nor were they represented. Their present whereabouts are unknown;
12. In accordance with Rule 6A of The First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the FTT Rules"), the proceedings, including details of the Parties, the Property and the place, date and time of the Case Management Discussion, were advertised on the website of the First Tier Tribunal for a period of more than 14 days prior to the Case Management Discussion. That being so, the Tribunal proceeded in the absence of the Respondents;
13. The Applicants' solicitor moved the Tribunal to grant an order for payment in the sum of £4,362.06, with interest thereon at the rate of 8% per annum;
14. In relation to the rent arrears, having regard to:-
  - a) The terms of the lease,
  - b) Copy rental receipts showing rental payments of £750.00 per month in September and October 2017;
  - c) Copy agreement dated 24 March 2019 and signed by the Respondents accepting arrears in the sum of £4,462.06;
  - d) Confirmation that a further £100.00 had been paid since thenthe Tribunal had no difficulty concluding that it was appropriate to grant an order for payment in the amount of £4,362.06;
15. There was no information before the Tribunal to enable it to conclude, or even consider, that any arrears were as a result of the delay or failure in the payment of any relevant benefit;
16. In the absence of the Respondent there was no request for a time to pay direction;

17. In relation to the matter of interest, the application sought "interest at the standard judicial rate of 8% per annum". This was less straight forward;
18. What might be referred to as the judicial rate of interest of 8% per annum arises from the Administration of Justice (Scotland) Act 1972 ("the 1972 Act") Section 4 as amended by Act of Sederunt (Interest in Sheriff Court Decrees and Extracts) 1993. The provisions of the 1972 Act, however, have not been extended to apply to proceedings before the Tribunal. The ability of the Tribunal to award interest is now contained within Rule 41A of the FTT Rules having been introduced by The First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Amendment Regulations 2018. Rule 41A provides:-

**41A.— Interest on orders for payment**

**(1) The First-tier Tribunal may include interest when making an order for payment.**

**(2) Where paragraph (1) applies, the interest is to be at the rate either—**

**(a) stated in the relevant tenancy agreement, or**

**(b) ordered by the First-tier Tribunal,**

**and running from the date of the decision of the First-tier Tribunal.**

19. In this case it was accepted that there was no provision for interest within the lease. It was a matter for the Tribunal to determine an appropriate rate of interest. The judicial rate of 8% per annum has applied to sheriff court orders for many years. It was, of course, introduced at that level at a time when the base rate of interest of the Bank of England was significantly higher than it is now (currently 0.75%). In the period between 1990 and 2000 the base rate of interest of the Bank of England fluctuated between 13.875% (1990) and 6% (2000). The lowest rate during that period appears to have been 5.375% (1993). The cost of borrowing money, of course, would always be higher than the base rate. Having regard to the present base rate of interest of the Bank of England, an award of interest on any order for payment at a rate of 8% does not appear to be justified;
20. The Applicants' representative moved the Tribunal to consider an award of interest in the amount of 5% per annum. The Tribunal considered that to be higher than necessary also. On the basis that bank loans can commonly be obtained at present with interest rates of 3% - 4%, the Tribunal considered that any award of interest should be in that range. The Tribunal, accordingly, ordered interest on the order for payment at the rate of 4% per annum;
21. The Applicants' representatives thereafter moved the Tribunal to make an award of expenses in terms of Rule 40 of the FTT Rules. Rule 40 provides as follows:-

**40.— Expenses**

**(1) The First-tier Tribunal may award expenses as taxed by the Auditor of the Court of Session against a party but only where that party through unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense.**

**(2) Where expenses are awarded under paragraph (1) the amount of the expenses awarded under that paragraph must be the amount of expenses required to cover any unnecessary or unreasonable expense incurred by the party in whose favour the order for expenses is made.**

22. The Applicants sought an award of expenses for the period from 24 March 2019 until the date of the Case management Discussion on 5 July 2019. It was argued that the Respondents' behaviour was unreasonable as they had:-
- a) delayed paying rent;
  - b) advised they would enter an agreement to regulate a payment plan for the arrears;
  - c) as a result, the Case Management Discussion initially assigned for 1 April 2019 was postponed;
  - d) they subsequently did enter in to a written agreement relating to the arrears but they did not execute it properly so it could not be registered in the Books of Council and Session (the Respondents had witnesses each other's signature) and then did not adhere to the terms of the agreement;
  - e) they moved from the Property without leaving a forwarding address resulting in a further Case Management Discussion scheduled for 15 May 2019 being postponed as the Tribunal was unable to intimate details of it to the Respondents;
  - f) They failed to attend the Case Management Discussion on 5 July 2019;

As a result of this, there was expense incurred by the Applicants in having their Solicitors preparing the agreement referred to, dealing with all necessary correspondence between the Parties and with the Tribunal, preparing submissions for each Case Management Discussion and preparing for attending and appearing at each Case Management Discussions;

23. While appreciating the factual basis of the submissions made, the Tribunal did not consider the actions of the Respondents (or their failures to act) as being "**unreasonable behaviour in the conduct of a case**" as is required in terms of Rule 40 of the FTT Rules. While the Applicants may well be of the view that the Respondents have been unreasonable, in relation to the conduct of the case before the Tribunal their only failing was not attending at the Case Management Discussion on 5 July 2019. There is, however, no compulsion on the Respondents to attend. The previous Case Management Discussions were postponed in advance. In relation to their dealings with the Tribunal, therefore, their behaviour could not be categorised as unreasonable and no award of expenses could be made;

## FINDINGS IN FACT

24. The Tribunal found the following facts to be admitted or established:-
- i. By lease dated 1 December 2013 the Applicants let the Property to the Respondents;
  - ii. The rent provided for in the lease was £600.00 per calendar month. The lease contained a clause permitting increases in rent after 9 August 2013;
  - iii. The rent was subsequently increased to £750.00 per calendar month;
  - iv. The Respondents fell in to arrears of rent and the Applicants applied to the Tribunal for an order for payment. At the time of the application the arrears amounted to £5,225.00;
  - v. The Respondents made part payment of the arrears. The Respondents also vacated the Property and £600.00 which had been paid as a

- deposit was released by the Tenancy Deposit Scheme, paid to the Applicants and applied to reduce the outstanding rent arrears;
- vi. the Respondents entered in to a written agreement an which they admitted arrears of £4,462.06 as at 24 March 2019;
  - vii. As at the date of the Case Management Discussion the arrears outstanding amounted to £4,362.06;

## **DECISION**

The Tribunal granted an order against the Respondents for payment of the sum of FOUR THOUSAND THREE HUNDRED AND SIXTY TWO POUNDS AND SIX PENCE (£4,362.06) STERLING to the Applicants, with Interest thereon at the rate of 4 PER CENTUM PER ANNUM (4%) running from the date of the decision of the First-tier Tribunal to grant this order, being 5 July 2019, 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.

**V Crawford**

5 July 2019

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Legal Member/Chair

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Date