



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/22/0376

Re: Property at 72 Rockhampton Avenue, East Kilbride, G75 8EQ (“the Property”)

Parties:

Mr Alan Heron, 26 Belden Ave, Unit 2311, Norwalk, CT, 06850, United States (“the Applicant”)

Mr Steven Fitchet, formerly residing at 72 Rockhampton Avenue, East Kilbride, G75 8EQ, and whose current whereabouts are unknown (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

This was an application for a payment order dated 7th February 2022 and brought in terms of Rule 111 (Application for civil proceedings in relation to a private residential tenancy) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant sought in his application payment of arrears in rental payments of £2,400.00 along with any further sums due from the date of the application to the date an order was made, together with interest from the date of any decision in relation to the Property from the Respondent, and provided with his application copies of the private residential tenancy agreement and rent arrears statement.

The private residential tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*, and the procedures set out in that Act appeared to have 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 4th April 2022, and the Tribunal was provided with the execution of service.

In advance of the Case Management Discussion, the Applicant's representatives advised the Tribunal that the Respondent had quit the Property and returned the keys to the Applicant on 10th April 2022, that the rent arrears to 10th April 2022 were £3,200.00, and that the Respondent's current whereabouts were unknown.

Case Management Discussion

A Case Management Discussion was held at 10.00 on 19th May 2022 by Tele-Conference. The Applicant did not participate, but was represented by Ms McMullen, solicitor. The Respondent did not participate, nor was he represented. The Respondent had 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 was invited by Ms McMullen with reference to the application and papers to grant an order for payment of the sum of £3,200.00 with interest from the date of the Tribunal's decision until payment in terms of Rule 41A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

Statement of Reasons

The jurisdiction of the Tribunal in relation to Private Residential Tenancies, such as that which applied to the Property, is set by statute. Section 71(1) of the *Private Housing (Tenancies) (Scotland) Act 2016* provides:

"First-tier Tribunal's jurisdiction

- (1) In relation to civil proceedings arising from a private residential tenancy—
 - (a) the First-tier Tribunal has whatever competence and jurisdiction a sheriff would have but for paragraph (b),
 - (b) a sheriff does not have competence or jurisdiction.
- (2) For the purposes of subsection (1), civil proceedings are any proceedings other than—
 - (a) the prosecution of a criminal offence,
 - (b) any proceedings related to such a prosecution."

The Tribunal accordingly has jurisdiction to hear civil proceedings arising from a private residential tenancy such as between the parties in this application.

The Tribunal considered the terms of the private residential tenancy agreement, the rent arrears information provided, and the submissions made by Ms McMullen, and was satisfied that these disclosed an outstanding balance of rent arrears of the sum sought of £3,200.00, which sum remained outstanding. Rent of £400.00 per month was due in terms of Clause 7 of the tenancy agreement. Accordingly, the Tribunal made an order for payment of that sum.

The Applicant also sought 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.

Ms McMullen confirmed that no rate is specified in the tenancy agreement, and accepted that it was for the Tribunal to order what rate to apply.

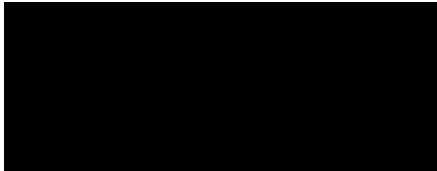
In the absence of any guidance on this matter, it appeared to the Tribunal to be just to award interest at a rate representing the investment or borrowing rate of lending banks for short term loans, which is currently approximately 3% per annum, and the Tribunal accordingly did so. Ms McMullen indicated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

Decision

In these circumstances, the Tribunal made an order for payment by the Respondent to the Applicant of the sum of £3,200.00 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.



19/05/2022

Legal Member/Chair

Date