



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 (1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/22/0820

Re: Property at 50 Osborne Place, Aberdeen, AB25 2DB (“the Property”)

Parties:

Mr Mark David Gault, Mrs Jasmine Alicia Gault, E3-001, E3 Al Zenia, 1, Abu Dhabi, United Arab Emirates (“the Applicants”)

Ms Heather Ann Wilson, 50 Osborne Place, Aberdeen, AB25 2DB (“the Respondent”)

Tribunal Members:

Sarah O'Neill (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 by the Respondent of the sum of £5215.75 with interest thereon at 5.25% from the date of this decision should be granted in favour of the Applicants.

Background

1. An application was received on 21 March 2022 from the applicants’ solicitor, Aberdeen Considine, on their behalf, for a payment order brought in terms of rule 111 (Application for civil proceedings in relation to a private residential tenancy) of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”).
2. Attached to the application form were the following:
 - (i) Private residential tenancy agreement between the parties relating to the property dated 25 and 26 March 2021.

- (ii) Rent statement dated 7 March 2022, showing the outstanding rent due as at that date to be £3150.
 - (iii) Letter from Aberdeen Considine on behalf of the applicants to the respondent dated 18 February 2022, enclosing Notice to Leave citing ground 4 and stating that an application for eviction would not be made to the tribunal before 22 May 2022.
- 3. In their application, the applicants sought a payment order for the sum of £3150 in rent arrears from the respondent, plus interest on this sum at 5.25%.
- 4. The application was accepted by the tribunal for determination on 8 April 2022. The application papers, together with notice of the case management discussion (CMD) scheduled for 16 June 2022, were served on the respondent by sheriff officer on behalf of the tribunal on 11 May 2022. No written representations or time to pay application were received from the respondent prior to the CMD.
- 5. The tribunal issued a direction to the applicants on 20 May 2022, requiring them to provide copies of any letters or emails sent to the respondent prior to making the tribunal application which notified her of the amount of rent arrears that she was due to pay to the applicants. A response was received from the applicants' representative on 31 May 2022, enclosing numerous letters and emails which had been sent to the respondent on a regular basis regarding her arrears between 28 May 2021 and 14 March 2022.
- 6. On 30 May 2022, a "motion to amend" the sum sought to £5,215.75, being the outstanding amount of rent arrears as at 27 May 2022, was received by email from Aberdeen Considine, together with an updated rent statement. Also attached was a copy email to the respondent showing that the motion to amend and rent statement had been sent to her on the same date.

The CMD

- 7. A CMD was held by remote teleconference call on 16 June 2022. Both applicants were present on the teleconference call and were represented by Mrs Elaine Elder, solicitor, of Aberdeen Considine. The respondent was not present and was not represented. The tribunal delayed the start of the discussion by 10 minutes, in case the respondent had been detained. She did not appear, however, and no telephone calls or messages had been received from her.
- 8. The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a

CMD had been duly complied with. It therefore proceeded with the CMD in the absence of the respondent.

9. Mrs Elder told the tribunal that the respondent had started to fall into arrears towards the end of 2021, and had paid no rent since 24 January 2022. The respondent was believed to still be living in the property but despite numerous attempts to contact her by telephone, email and in person visits at the property, there had been no response from her. The outstanding arrears stood at £5215.75 as at 27 May 2022. Mrs Elder confirmed that the applicants wished to amend their application to increase the sum sought to that amount.
10. The applicants also sought interest on this sum at the rate of 5.25%. Paragraph 8 of the tenancy agreement between the parties provides: *“if rental remains unpaid, the landlord shall be entitled to charge interest on all sums due in terms of this agreement from the due date of payment until the date on which payment is received and at the rate of five per centum per annum above the Royal Bank of Scotland plc. Base lending rate”*. Mrs Elder said that as at the date of the application, the Royal Bank of Scotland plc. lending rate was 0.25%. Therefore, the applicants were entitled to seek interest at 5.25% on the outstanding rent arrears owed by the respondent.

Findings in fact

11. The tribunal made the following findings in fact:
 - The private residential tenancy between the parties commenced on 26 March 2021.
 - The rent payable under the tenancy agreement was £1000 per month, payable in advance on the 26th day of each month.
 - As at 27 May 2022, the respondent owed the applicants £5215.75 in rent arrears.

Reasons for decision

12. The tribunal consented to the amendment request made by the applicants to increase the sum sought to £5215.75. This was the sum shown on the updated rent statement attached to the amendment request. The amendment request had been sent to the tribunal and to the respondent at least 14 days before the CMD, as required in terms of rule 14A of the 2017 rules.
13. In the absence of any written representations from the respondent disputing the facts, or any appearance by her at the CMD, the tribunal considered that it was able to make sufficient findings to determine the case, and that to make a

decision without a hearing would not be contrary to the interests of the parties. It therefore proceeded to make a decision at the CMD without a hearing in terms of rules 17(4) and 18 (1) (a) of the 2017 rules.

14. On the basis of all the evidence before it, the tribunal was satisfied that the respondent owed £5215.75 in rent to the applicants as at the date of the CMD. It was also satisfied that the parties had a contractual arrangement in terms of clause 8 of the tenancy agreement that interest would be charged on any rent arrears at the rate of 5% per annum above the Royal Bank of Scotland plc. base lending rate.

15. It therefore decided to make an order for payment by the respondent to the applicants of £5215.75 with interest thereon from the date of this decision at 5.25% until payment.

Decision

The tribunal grants an order for payment by the respondent to the applicants for the sum of £5215.75 with interest thereon from the date of this decision at 5.25%.

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.



Legal Member/Chair

16 June 2022

Date