



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/22/1551

Re: Property at 24 Bells Brae, Edinburgh, EH4 3BJ (“the Property”)

Parties:

ACER PROPERTY EDINBURGH LIMITED C/O MR STUART GUNDERSON, 2 Littlejohn Road, Edinburgh, EH10 5GN (“the Applicant”)

Mr Peter John Darling, Carterhaugh House, Selkirk, TD7 5HE (“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 £3845.20 with interest thereon at 8% from the date of this decision should be granted in favour of the Applicant.

Background

1. By application received on 24 May 2022, the Applicant submitted an application seeking 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”). The Applicant sought an order for payment of £3845.20 in respect of rent arrears which were due to be paid by the Respondent to the Applicant, together with interest at 8% as set out in clause eight of the tenancy agreement.
2. Attached to the application form were:

- i. copy private residential tenancy agreement between the parties in relation to the property which was signed by both parties on 30 June 2020 and commenced on 3 July 2020.
 - ii. rent statement showing the outstanding arrears due as at 29 November 2021 to be £3845.20.
3. The application was accepted on 7 June 2022. The application papers, together with notice of the case management discussion (CMD) scheduled for 18 August 2022, were served on the Respondent by sheriff officer on behalf of the tribunal on 15 July 2022. No written representations or time to pay application were received from the Respondent prior to the CMD.
4. The tribunal issued a direction to the Applicant on 21 July 2022, requiring it to provide by 4 August 2022: 1) confirmation of the date when the Respondent vacated the Property and 2) copies of any letters, emails or notices sent to the Respondent by the Applicant regarding the outstanding rent arrears sought in the application, together with proof of these having been sent to the Respondent.
5. A response to the direction was received from the Applicant's representative, TC Young solicitors, on 21 July 2022 providing the information requested.

The CMD

6. A CMD was held by remote teleconference call on 18 August 2022. The Applicant was represented by Miss Kirsty Donnelly, solicitor, of TC Young. The Respondent was not present on the teleconference call and was not represented. The tribunal delayed the start of the discussion by 10 minutes, in case the Respondent had been detained. He did not appear, however, and no telephone calls or messages had been received from him.
7. 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.
8. Miss Donnelly told the tribunal that there had been no contact from the Respondent since the application was made and no payments had been made towards the arrears. The Applicant therefore sought an order for payment against the Respondent for the outstanding balance of £3845.20. The Applicant also sought an award of interest on this sum at the rate of 8% per annum, as provided for in clause 8 of the tenancy agreement.

9. Miss Donnelly also sought permission to amend the application to change the name of the Applicant to “Acer Property Edinburgh Limited”, its correct designation.

Findings in fact

10. The tribunal made the following findings in fact:

- The Applicant is the owner and registered landlord of the property.
- The private residential tenancy between the parties commenced on 3 July 2020.
- The rent payable under the tenancy agreement was £3500 per month, payable in advance on the 3rd day of each month.
- The Respondent paid a tenancy deposit of £3500 at the commencement of the tenancy.
- The Respondent vacated the property on or around 5 October 2021.
- As at 5 October 2021, the Respondent owed the Applicant £7345.20 in rent arrears.
- The deposit of £3500 had been recovered by the Applicant from Safe Deposits Scotland on 29 November 2021.
- The outstanding balance of the rent arrears due as at the date of the CMD was therefore £3845.20.
- The tenancy agreement stated at clause eight: *“Interest on late payment of rent may be charged by the Landlord at eight per cent per year from the date on which the Rent is due until payment is made.”*
- TC Young wrote to the Respondent on 24 March 2022, advising him on behalf of the Applicant’s letting agent, Murray and Currie Ltd, that he owed £3845.20 in rent arrears. The letter stated that if payment was not made within 7 days, they would take their client’s instructions on lodging an application to the tribunal for a payment order, and that they would seek to claim interest in addition to the principal sum should an application for payment be necessary.

Reasons for decision

11. The tribunal consented to the amendment request made by Miss Donnelly on behalf of the Applicant to amend the name of the Applicant to “Acer Property Edinburgh Limited” which was the name shown on the title deed for the property and the relevant entry in the Scottish landlord register.
12. In the absence of any written representations from the Respondent disputing the facts, or any appearance by him 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.

13. On the basis of all the evidence before it, the tribunal was satisfied that the Respondent owed £3845.20 in rent to the Applicant as at the date of the CMD. It was also satisfied that the tenancy agreement signed by both parties provided that interest was payable on late rent at the rate of 8% per annum. It was satisfied that the Applicant had given the Respondent fair notice of the sum sought, of the likelihood that a payment application would be made to the tribunal, and that the applicant would seek to claim interest on any sum awarded.

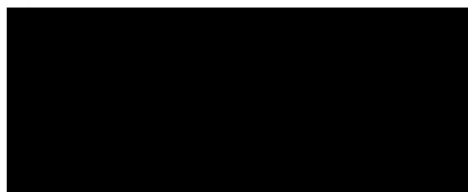
14. For the reasons stated above, the tribunal decided to make an order for payment by the Respondent to the Applicant for the sum of £3845.20 with interest thereon from the date of the decision at the rate of 8% per annum.

Decision

The tribunal grants an order for payment by the Respondent to the Applicant for the sum of £3845.20 with interest thereon from the date of the decision at the rate of 8% per annum.

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

____18 August 2022_____
Date