



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 70(1) of the Private Housing Tenancies (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/22/3489

Re: Property at 42 Burns Crescent, Irvine, Ayrshire (“the Property”)

Parties:

Mr Robert Neil, Waterpark, Kilmaurs, KA3 2LU (“the Applicant”)

Mrs Margaret McGowan, 42 Burns Crescent, Irvine, Ayrshire (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment in the sum of Four thousand eight hundred and eight pounds and eight pence (£4808.08) Sterling together with interest at the rate of two per cent per annum above the base lending rate of the Royal Bank of Scotland plc from the date of this decision until payment.

Background

- 1** By application to the Tribunal the Applicant sought a payment order against the Respondents in respect of outstanding rent arrears. In support of the application the Applicant provided a copy of the tenancy agreement between the parties and a rent statement.
- 2** By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for the 15th May 2023 to take place by teleconference. A copy of the application paperwork together with notification of the date and time of the

Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondents by Sheriff Officers.

Case Management Discussion

- 3 The Case Management Discussion took place by teleconference on 15 May 2023. The Applicant was in attendance. The Respondent was represented by Mr Alister Meek from CHAP. She was not present herself.
- 4 The Applicant advised that the Respondent had been in arrears over the course of the tenancy. During the Covid-19 pandemic he had offered her three months rent free however she had continued not to pay rent after that had expired. The Respondent had been in the tenancy for a long time and had not always been good with her finances. Her hours had changed at work and the arrears began to accrue. She had paid some amounts but stopped again when the eviction ban came in. The Applicant had directed her to apply for a hardship loan in November 2021 however she didn't qualify as she was earning too much money. She had tried to apply for benefits but had faced the same issue. The Applicant had therefore issued a notice to quit in February 2023 however the Respondent subsequently became entitled to housing benefit which covered the rent. It had been paid ever since and he had not proceeded with the eviction. He didn't think the Respondent was disputing that she owed the money. He had been in the property recently and it was in good condition. The Applicant confirmed that he was seeking interest at 8% although he noted that the tenancy agreement provided for 2%. However he felt the recent cost of living crisis and inflation meant that the higher amount was justified.
- 5 Mr Meek advised that the Respondent did not dispute the arrears were due. She was however disputing the interest, based on the contractual terms that stated a rate of 2% above the base lending rate of the Royal Bank of Scotland. He also queried the balance of arrears, which he calculated to be £5450.10, albeit he noted the Applicant was in fact seeking a lesser amount. The Applicant confirmed that he was seeking the sum of £4808.08.

Findings in Fact and Law

- 6 The parties entered into a Tenancy Agreement dated 16th April 2011.
- 7 In terms of Clause 4 of the said Tenancy Agreement the Respondent undertook to make payment of rent at the rate of £425 per calendar month. Further in terms of Clause 6 of the Agreement the Applicant was entitled to charge interest of late payment of rent at the rate of two per cent per annum above the base lending rate of the Royal Bank of Scotland plc on any overdue payment until paid.
- 8 As at 16 January 2023 arrears in the sum of £4808.08 were outstanding.

- 9 The Respondent is liable to pay the sum of £4808 to the Applicant under the terms of the said tenancy agreement between the parties together with interest at the rate of two per cent per annum above the base lending rate of the Royal Bank of Scotland plc from the date of this decision until payment.

Reasons for Decision

- 10 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. There were no substantive facts in dispute therefore the Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no issues to be resolved that required the hearing of evidence. The Respondent accepted the sum was due. She also accepted that she was bound to pay interest on any outstanding sum under the terms of the tenancy agreement. The Tribunal concluded that it should apply the contractual rate, as opposed to the increased figure sought by the Applicant, on the basis that this was a matter of agreement between the parties.
- 11 Accordingly based on its findings in fact the Tribunal therefore accepted that the Respondent was liable to pay the sum of £4808.08 together with interest at the rate of two per cent per annum above the base lending rate of the Royal Bank of Scotland plc and determined to make an order in those terms.

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.

R O'Hare

15 May 2023

Legal Member/Chair

Date