



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/22/3670

Re: Property at Flat 5, 31 Harewood Crescent, Edinburgh, EH16 4XS (“the Property”)

Parties:

Edinburgh Living LLP, Waverly Court, 4 East Market Street, Edinburgh, EH8 8BG (“the Applicant”)

Miss Caitlin Hunter, Mr Mark Paul Mitchell, formerly of Flat 5, 31 Harewood Crescent, Edinburgh, EH16 4XS and whose current whereabouts are unknown; formerly C/O HMP Addiewell, 9 Station Road, Addiewell, West Calder, EH55 8QF and whose current whereabouts are unknown (“the Respondents”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision (in absence of the Respondents)

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

Background

This was an application for a payment order dated 5th October 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 originally sought in its application payment of arrears in rental payments of £9,766.00 in relation to the Property from the Respondents, and provided with its application copies of the private residential tenancy agreement, rent increase notice, 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 Respondents had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 13th and 14th February 2023, and the Tribunal was provided with the executions of service.

A Case Management Discussion was held at 10:00 on 16th March 2023 by Tele-Conference. The Applicant did not participate, but was represented by Mr Boyd, solicitor. The Respondents did not participate, nor were they represented. The Respondents 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.

Mr Boyd confirmed that the figure originally sought in this application had increased to £13,261.00, as the Respondents had made no further payments towards rental since the date of the application. Mr Boyd asked the Tribunal to amend the sum sought to that increased amount.

The Tribunal explained that it considered that it could not properly grant an order today against the Respondents in their absence for a sum which is significantly more than that sought in the application form.

The Tribunal explained that the Applicant could either seek an order for the sum sought in the application and thereafter bring a further application for further sums of rental which were outstanding, or alternatively, the Applicant could request an adjournment of the Case Management Discussion in order to allow it to amend its application in terms of Rule 14A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended to the greater sum which it seeks.

In terms of Rule 14A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, a request to amend the application must be intimated to the Tribunal and to the Respondents at least 14 days prior to a Case Management Discussion.

Mr Boyd asked the Tribunal to adjourn this application to a further date to allow the Applicant to provide a written amendment to the Tribunal and to the Respondents in which it would seek to increase the sum sought to the figure which is due by the time of any continued Case Management Discussion. The Tribunal noted that the Applicant had not produced proof of service of the rent increase notice on the Respondents, and that it might wish to do so if it relied on that notice.

The Tribunal considered Mr Boyd's submission to be reasonable in the circumstances, and adjourned the application to a further Case Management Discussion, in order to allow it to amend the sum sought in its application to reflect the rental arrears which were outstanding.

Thereafter, by e-mail to the Tribunal dated 16th May 2023, and which was also copied to the respective e-mail addresses authorised and provided by both Respondents in the written lease agreement, the Applicant's representative moved to amend the sum sought in the application to £13,610.50. This was the amount of rent outstanding to the date of termination of the lease on 16th April 2023, and a copy updated rent arrears statement was provided therewith.

Continued Case Management Discussion

A continued Case Management Discussion was held at 10:00 on 30th May 2023 by Tele-Conference. The Applicant did not participate, but was represented by Mr Gordon, solicitor. The Respondents did not participate, nor were they represented.

The continued Case Management Discussion notification letters to the Respondents were sent by recorded delivery post. The Tribunal noted that the letter to the Second Respondent, Mr Mitchell, had been returned by HMP Addiewell noting that he was no longer there.

However, the e-mail of 16th May 2023 sent by the Applicant's agent to both Respondents and the Tribunal noted that the Applicant moved to amend the application but also specified that date of the continued Case Management Discussion. In those circumstances, the Tribunal was satisfied that the Second Respondent had received reasonable notice of the hearing in terms of Rule 24 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

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 Mr Gordon with reference to the application and papers to grant an order for payment of the sum of £13,550.50. He explained that the Applicant could not locate proof of service of the rent increase notice. He accordingly reduced the sum sought in the amendment to the application to remove the increased rent entries to provide the reduced sum sought.

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.

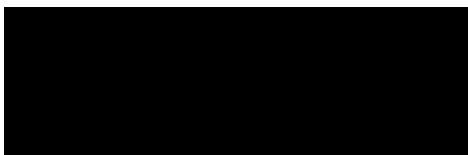
The Tribunal considered the terms of the private residential tenancy agreement, the updated rent arrears information provided, and the submissions made by Mr Gordon, and was satisfied that these disclosed an outstanding balance of rent arrears to the termination of the lease totalling £13,550.50. Rent of £695.00 per month was due in terms of Clause 8 of the tenancy agreement. Accordingly, the Tribunal made an order for payment of that sum.

Decision

In these circumstances, the Tribunal made an order for payment by the Respondents jointly and severally to the Applicant of the sum of £13,550.50.

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.



30th May 2023

Legal Member/Chair

Date