



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/23/0977

Re: Property at 5 St Margarets Place, Edinburgh, EH9 1AY (“the Property”)

Parties:

Mr Brian Wilson, 5 Middlebank Holdings, Dunfermline, Fife, KY11 8QL (“the Applicant”)

Ms Krisztina Beata Fodor, Mr David Robert Lennox, 5 St Margarets Place, Edinburgh, EH9 1AY; 5 St Margarets Place, Edinburgh, EH9 1AY (“the Respondents”)

Tribunal Members:

Valerie Bremner (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment in the sum of Twenty-nine Thousand Eight Hundred and Forty-one Pounds and ten pence (£29841.10) be made in favour of the Applicant and against the Respondents together with interest at the rate of 8% per year from the date of the order until paid.

Background

1.This application for a payment order was first received by the Tribunal on 13th January 2023 and accepted by the Tribunal on 13th March 2023.A case management discussion was initially fixed for 21st April 10am along with a related application for an eviction order with reference HPC/EV/23/0152.

Case Management Discussions

2.The case management discussion on 21st April 2023 was postponed by the Tribunal at the request of the second Respondent and a new case management discussion for both applications was fixed for 16th June 2023 at 2pm.At the case management discussion on 16th June 2023 the application was continued to a further case management discussion on 18th July 2023 at 10am to allow the Respondents to take advice on their position as regards the eviction application.

3.The case management discussion on 18th July 2023 was attended by the Applicant and he was represented by Mr McKeown Trainee Solicitor of Jackson Boyd solicitors. Both of the Respondents were present at the teleconference and Mr Lennox spoke for them.

4.The Tribunal had sight of the initial payment order applications, a tenancy Agreement and a rent statement.

5.On 2nd June the Applicant's representative resubmitted the payment order application seeking a higher sum by way of rent arrears which at that time were said to stand at £23350.Along with the additional application forms the Applicant's solicitor had lodged an up-to-date rent statement and this documentation had been intimated to the Respondents.

6.The parties had entered a private residential tenancy at the property from 20th December 2021 with monthly rent payable in the sum of £1950.Rent arrears had started to accrue in March 2022 and although rent amounting £5900 to had been paid for the period from August 20th to 19th November 2022 no rent at all had been paid since then.

7. Mr McKeown for the Applicant indicated that the rent arrears now stood at £25,300 pounds when the most recent payment of rent due was included in the total rent arrears figure.

8. For the Respondents Mr Lennox indicated that they accepted the level of rent arrears said to be due. He said that he had been attempting to make a payment through Santander Bank towards the rent arrears. He apologised for the position that they had put Mr. Wilson the landlord in in relation to the unpaid rent. He said that the sum of £20,000 was going through anti money laundering checks with his bank and that he had paid this sum into the bank the previous Wednesday. He said that he had been told that it would take three to five working days to "go through" but he had no evidence to show that this payment had been made.

9.The Tribunal had granted an eviction order in the related case but continued the case management discussion on the payment order application to a later date to see if a payment was made towards the rent arrears and to confirm the rent arrears total. A further case management discussion was set down for 13th October at 2pm.

10.On 29th September 2023 the Applicant's solicitors intimated a new application seeking payment in the sum of £29841.10 together with 8% interest together with

an updated rent statement. This had been intimated to the email address for the Respondents used in the tenancy.

11. A case management discussion took place at 2pm on 13th October. The Applicant did not attend but was represented by Ms White of Jackson Boyd solicitors and there was no appearance by or on behalf of the Respondents. The Tribunal Legal member noted that there had been intimation of the date of the continued case management discussion by e mail to the second Respondent and a letter had been sent to the first Respondent which had not been returned. The Tribunal legal member was satisfied that fair notice had been given to the Respondents of the case management discussion and that it was appropriate to proceed in their absence.

12. Ms White advised the Tribunal that she was seeking to increase the sum being requested by way of a payment order to £29841.10 and was seeking interest at 4% above the current base rate as set out in the tenancy agreement and was seeking interest of more than 8% as the base rate had increased since the application had initially been lodged. She explained that despite what had been said at the earlier case management discussion nothing had been heard from the Respondents and no sums had been paid towards the rent arrears. The Respondents had been evicted from the property on 29th September 2023. The Tribunal was satisfied that it was appropriate to allow the sum being requested to be increased in terms of rule 14A of the Tribunal rules of procedure given that proper intimation of the requested increase had been made.

13. The Tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

14. The parties entered into a private residential tenancy at the property with effect from 20th December 2021 with monthly rent of £1950 payable in advance.

15. The Respondents were evicted from the property on 29th September 2023.

16. Rent arrears started to accrue in March 2022 and no rent has been paid by the Respondents from 19th November 2022 to 29th September 2023.

17. Rent arrears have accrued in the sum of £29,841.10 as of 29th September 2023.

18. The Respondents accepted the level of rent arrears said to be due as at 18th July 2023.

19. The Second Respondent indicated he was trying to make a substantial payment towards the rent arrears at the case management discussion on 18th July 2023.

20. Despite this no payments have been received towards the rent arrears and the Respondents have not contacted the Applicants or their solicitors to make any payments towards the arrears.

21.The tenancy agreement between the parties sets out in clause 11 that in the event of rent being paid late that the landlord's agent can charge 4 % above Bank of Scotland base rate in interest on late payments.

22.The sum of £29841.10 is lawfully due by the Respondents to the Applicants.

Reasons for Decision

23.The rent in this application had not been paid for many months before the tenancy ended and despite a suggestion that a large sum towards the substantial arrears would be paid in July 2023 this was not forthcoming and the Respondents have not made further contact to offer any payment towards the rent arrears .It appeared reasonable to grant the order in these circumstances. The Tribunal was not asked to impose interest from a date before the order was granted but was asked to impose a rate higher than 8% to reflect that base rates have changed over the course of the tribunal proceedings. The Tribunal considered that it was appropriate to award interest at the rate of 8% as this was the rate set out in the application intimated to the Respondents.

Decision

The Tribunal granted an order for payment in the sum of £29,814.10 against the Respondents and in favour of the Applicants together with interest at the rate of 8 % per year from the date of the order until payment is made.

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

Date 13.10.23