



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/23/2991

Re: Property at 3/3 4 Isla Street, Dundee, DD3 7HT (“the Property”)

Parties:

Mr James Dignan, 66 Monifieth Road, Broughty Ferry, Dundee, DD5 2RX (“the Applicant”)

Mr Selby Magaraba, 3/3 4 Isla Street, Dundee, DD3 7HT (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member)

Decision in the absence of the Respondent

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for the sum of £1,315 with interest at the contractual rate of 5% above the base rate of the Bank of England be granted in favour of the Applicant from the Respondent.

- **Background**
- This was a case management discussion to consider the application made by the Applicant dated 23rd May 2022 for an order for payment of rent arrears in terms of Rule 111 of the Tribunal Rules. The CMD took place by teleconference on 13th December 2023.
- The Applicant is the owner of the Property and Landlord in a Tenancy with the Respondent who is the tenant, which commenced on 15th November 2022.
- The Applicant had lodged and the Tribunal had sight of and considered the following documents:-
 - Application for payment dated 30th August 2023
 - Copy Tenancy Agreement between the Applicant and the Respondent commencing 15th November 2022
 - Rent statement dated from November 20 to August 2023.

- The Applicant lodged a further rent statement with an email on 30th November advising that he wished to increase the sum due to £1400 and enclosing a rent statement showing that one months' rent plus £25 was paid on 12th September 2023 bringing the account to a zero balance but that 3 more payments fell due on 15th September, 15th October and 15th November leaving a sum due of £1,400 by 30th November.
- Service was validly affected on the Respondent by Service by Sheriff Officers who served the papers on the Respondent on 2nd November 2023.

- **The Case Management Discussion**

1. The CMD took place by teleconferencing and the Legal Member waited until 14.05 to see if the Respondent was going to join the call. The Respondent did not join and was not represented at the CMD. The Respondent has not lodged any written submissions for the Tribunal to consider.
2. The legal member made introductions and explained the purpose and order of proceedings also advising that the Tribunal could make a decision after a CMD which it could after a hearing if satisfied it was appropriate to do so.
3. Mr David Wilkie of The Property Management Company, the Applicant's representative, attended on the call. The legal member considered it appropriate to continue with the CMD given that intimation had been given to the Respondent and he has not responded in writing or requested any postponement of today's CMD.
4. Mr Wilkie advised that the Applicant was seeking an order for payment of rent arrears. He confirmed that at the time of the application the amount due was £475 but this has now increased to £1,400 less £85 which he advised had been paid on 11th December. He confirmed the tenancy is still ongoing although the Applicant is considering eviction proceedings in view of the arrears and has sent some pre action letters.
5. The legal member asked if the request for an increase of the sum sought had been sent to the Respondent and Mr Wilkie advised that although he had not sent a copy of the email which he had sent to the Tribunal to the Respondent, he had regularly messaged him to advise of the outstanding arrears and had sent a pre action letter on 28th November 2023 by email to the Respondent which specifically confirmed the arrears were then £1,400 and that the applicant would be pursuing recovery.
6. Mr Wilkie confirmed that interest is due in terms of the lease at the rate of 5% above the base rate of the Bank of England and asked that interest be added to any order. He confirmed the sum due today after deduction of £85 was £1,315.

Findings in Fact

1. The parties entered into a lease of the Property in the form of a Private Residential tenancy which commenced on 15th November 2022.
2. The Rent due in terms of the lease is £475 per calendar month payable in advance

3. The tenant is still residing at the Property and the tenancy is ongoing.
4. The tenant paid £85 on 11th December for rent due over the last 3 months
5. The rent outstanding at today's date is £1315.
6. Interest is due in terms of clause 8 of the tenancy agreement at the rate of 5% above the base rate of the Bank of England on unpaid rent.
7. The Applicant has intimated his request for an increase in the sum due.

- **Reasons for Decision**

8. The parties have entered into a lease where the Respondent has leased the property from the Applicant and has agreed to pay £475 per month in rent.
9. The Respondent has failed to pay the full rent due. The Respondent paid August's rent late with an extra £25, but then has not paid any rent for September, October and November until he paid £85 on 11th December 2023 leaving the sum of £1,315 outstanding.
10. The Respondent was served notice of this application by sheriff officer on 2nd November 2023 and has not made any written representations or attended this CMD. The Applicants provided a revised rent statement confirming rent had increased on 30th November and he advised the Respondent of the increase in arrears by way of a letter dated 28th November 2023 sent by email to the Respondent, so the Tribunal finds that the Applicant has successfully intimated a request to increase the sum due.
11. The Tribunal accepts the written evidence and verbal statements made by the Applicant's representative who the Tribunal found credible in his evidence that the rent outstanding as of today 13th December is £1,315. The Tribunal notes that interest is set out at 5% above the Bank of England base rate from time to time, as due in clause 8 of the lease in the event rent is unpaid. In the absence of any representations from the Respondent the Tribunal finds it fair and appropriate to make an order for payment for that sum today. There being no application for time to pay the Tribunal makes an order for payment of the sum claimed plus interest.

- **Decision**

An order for payment of the sum of £1,315 together with interest at the rate of 5% above the Base Rate of the Bank of England from time to time until paid is granted.

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.



13 December 2023

Legal Member/Chair

Date