



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/23/4337

Re: Property at Flat 13, 12 Well Spring Close, Edinburgh, EH13 9FD (“the Property”)

Parties:

PFPC MMR 1 LP, 1 Hay Avenue, Edinburgh, EH16 4RW (“the Applicant”)

Mr James McWhinnie, Flat 13, 12 Well Spring Close, Edinburgh, EH13 9FD (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

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 December 2023 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 sought in its application payment of arrears in rental payments of £8,347.14 together with interest at four per cent per annum from the date of any decision in relation to the Property from the Respondent 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 Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 1st February 2024 and the Tribunal was provided with the execution of service.

By e-mail to the Tribunal of 2nd February 2024, the Applicant provided an updated rent arrears statement disclosing arrears to that date of £9,356.64, and amended the sum sought in the application to that amount in terms of Rule 14A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

Case Management Discussion

A Case Management Discussion was held at 10:00 on 19th March 2024 by Tele-Conference. The Applicant did not participate, and was represented by Mr Caldwell, solicitor. The Respondent did not participate, nor was he represented.

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 Caldwell invited the Tribunal with reference to the application and papers to grant an order for payment of the sum of £9,356.64 with interest from the date of the Tribunal's decision until payment in terms of Rule 41A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended. He advised the Tribunal that arrears had increased to £10,206.39, but indicated that he did not intend to seek to amend the sum sought in this application.

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 rent increase notice, the rent arrears information provided, and the submissions made by Mr Caldwell, and was satisfied that these disclosed an outstanding balance of rent arrears due of £9,356.64. Rental of £825.00 per month was payable in advance in terms of clause 8 of the private residential tenancy agreement. By rent increase notice dated 1st April 2023 the rent was increased to £849.79 from 4th July 2023. Accordingly, the Tribunal made an order for payment of that sum.

The Applicant also sought interest on that amount in terms of Rule 41A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

In terms of that rule, the Tribunal may include interest at the rate either stated in the tenancy agreement, or ordered by the Tribunal. No rate is specified in the tenancy agreement, so it was for the Tribunal to order what rate to apply.

In the absence of any guidance on this matter, it appeared to the Tribunal to be just to award interest at a rate representing the investment or borrowing rate of lending banks for short term loans, which is currently approximately 5.25% per annum, and the Tribunal accordingly did so.

Decision

In these circumstances, the Tribunal made an order for payment by the Respondent to the Applicant of the sum of £9,356.64 with interest thereon at the rate of five and one quarter per cent per annum from the date of the decision of the Tribunal until payment.

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.

N Kinnear

19/03/2024

Legal Member/Chair

Date