



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (Act)

Chamber Ref: FTS/HPC/CV/23/2833

Re: Property at 377/2 Leith Walk, Edinburgh, EH6 8SE (“the Property”)

Parties:

Mr Massimo Circi, 10 Elgin Terrace, Edinburgh, EH7 5NN (“the Applicant”)

Miss Jennifer Tritschler, 377/2 Leith Walk, Edinburgh, EH6 8SE (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Tony Cain (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment be granted in the sum of £3,920.

Background

This is an application under Rule 111 and section 71(1) of the Act in respect of alleged rent arrears.

The Tribunal had regard to the following documents:

1. Application received 17 August 2023;
2. PRTA commencing 16 June 2019;
3. Bank Statements and Statement of Account from the Applicant;
4. Written Representations from the Applicant and Respondent dated various dates and enclosing documentation to address considerations of reasonableness;
5. Statement of Rental Arrears as at 16 February 2024 from Respondent;
6. Statement of Rental Arrears as at 1 March 2024 from Applicant along with screenshots of payments.

Hearing

The case called for a Hearing by conference call on 7 March 2024. The Applicant participated and represented himself. The Respondent participated and represented herself.

The Tribunal explained the purpose of the Hearing and the procedure that would be followed to the Parties.

Preliminary Matters

Both Parties had lodged updated Statements of Rent Arrears in compliance with the Tribunal's Direction issued following the CMD. These statements disclosed that there was only £30 in dispute between the Parties and this related to a late payment fee.

Both Parties confirmed they had copies of each other's rent statements.

Rent Arrears

The Tribunal then discussed the rent arrears with the Parties and identified that the amount of £3,920 was agreed as due.

Late Payment Fee

The Tribunal then considered the "late payment fee" claimed by the Applicant in the sum of £339. The Applicant informed the Tribunal that he had calculated this in accordance with Clause 36 of the PRTA.

Clause 36 of the PRTA provided:

Late Rent Payment

The Tenant is meant to pay the rent on time every 16 of the month. If the payment of rent is late, or there are any sums overdue, the Landlord can charge interest at the rate of 6% to any outstanding sums due by the Tenant.

The Tribunal questioned the Applicant's understanding and application of Clause 36. It was clear from his evidence that he considered this to be a late payment fee (or charge) at a rate of 6% on the month's rent outstanding.

The Tribunal queried the Respondent's understanding of this Clause. The Respondent accepted that this was in the PRTA she had entered into. She considered that from previous dealings a £30 late payment charge would have applied. She made reference to email exchanges (which were not before the Tribunal) to this effect.

The Applicant referred to conversations with the Respondent over charges for late payment – which the Respondent disputed.

Time to Pay

The Respondent had made reference to wishing to pay any amounts due by instalments of £200 per month in her email to the Tribunal enclosing the Statement of Rental Arrears.

The Tribunal explained to the Respondent that it could not consider an application for Time to Pay at the Hearing as no written application had been made. The Tribunal further explained that the Respondent could apply for a Time to Pay Order if, following the Tribunal's Determination in this matter, she could not reach any agreement with the Applicant on paying the sums found due by instalments.

The Tribunal informed the Respondent that Guidance on making a Time to Pay Order Application was on the Tribunal website and the application form could be downloaded from there. A Time to Pay Order application could not be made until after the Tribunal had granted an order for payment and a charge (legal demand) for payment had been served.

Findings in Fact

Tribunal then considered the documentary and oral evidence it had received from the Parties and in so far as material made the following findings in fact:

1. The Parties let the subjects under a PRTA commencing 16 June 2019;
2. The monthly rent was £950;
3. As at the date of the Hearing the Respondent was in agreed arrears of rent in the sum of £3,920; and
4. The Respondent had applied a late payment fee in the sum of 6% to each late rental payment.

Decision and Reasons

The Tribunal was satisfied that in the circumstances the Applicant was due the agreed outstanding rent from the Respondent in the sum of £3,920.

The Tribunal carefully considered the wording of Clause 36. It purported to apply interest at a rate of 6% to late payments of rent. However, the Applicant's interpretation and application of Clause 36 was to apply what he termed a "late payment fee" of 6% of the late rental payment. The Tribunal did not consider that was a reasonable interpretation or application of Clause 36.

The Tribunal considered the wording of Clause 36 to lack clarity and certainty. A reasonable provision would have been to apply interest at a fair rate from the date a payment was due until it was paid. The Tribunal customarily comes across such provisions in other PRTAs.

Clause 36 certainly did not entitle the Applicant to apply a "late payment fee".

The Tribunal was of the view that there was no lawful basis in the circumstances for charging and recovering a late payment fee.

The Tribunal grant an order for payment in the sum of £3,920.

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.

A. Strain

07 March 2024

Legal Member/Chair

Date