



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/23/4116

Re: Property at Ugstonrigg Cottage, Haddington, EH41 3SU (“the Property”)

Parties:

Mrs Alison Harrison, Mr Simon Harrison, 1 Flat 91, Donaldson Drive, Edinburgh, EH12 5FA (“the Applicants”)

Mr Adam Symes, Mrs Camelia Symes, Ugstonrigg Cottage, Haddington, EH41 3SU (“the Respondents”)

Tribunal Members:

Neil Kinnear (Legal Member) and Eileen Shand (Ordinary 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 15th November 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 Applicants originally sought in their application payment of arrears in rental payments of £17,500.00 together with interest at three per cent per annum from the date of any decision in relation to the Property from the Respondents and provided with their application copies of the private residential tenancy agreement 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.

Service was validly effected by advertisement in terms of Rule 6A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, and the Tribunal was provided with confirmation of service by advertisement. Service by sheriff Officer had been unsuccessful as access could not be obtained to the Property due to the front gate being locked.

After service by advertisement, the Respondents contacted the Tribunal by e-mail and asked for copies of the papers to be e-mailed to them. The Tribunal did so.

Thereafter, by e-mail dated 14th March 2024, the Respondents e-mailed the Tribunal. They stated that they wished to defend the application and asked for a postponement. They stated that they required to attend in person to advance a complicated defence concerning many matters including the validity of the lease agreement, the validity of notices, the management of the Property, and the absence of essential documents which they had requested from the Applicants. They stated that they would be abroad on business at the date of the Case Management Discussion and had been unable to engage a legal representative.

The Applicants strongly opposed the request to postpone. They noted that the Respondents had accumulated rent arrears of £31,500.00 and had made no payments of rent for nine months. They considered that the Respondents were simply seeking to delay the granting of an order by the Tribunal. They referred the Tribunal to a previous decision made by it on 20th October 2022, in which the Tribunal made an order for payment of £26,250.00 of rent arrears against the Respondents in respect of the previous property they had rented from a different landlord.

The Tribunal requested further details from the Respondents regarding their location. The Respondents replied that they would be in New York on business. They gave no further details, nor did they provide any vouching by way of airplane tickets or hotel bookings as evidence. They did not provide any details concerning their defence to this application. They did not explain in what respects they challenged the validity of the lease agreement and notices, nor provide any details concerning management concerns about the Property nor regarding any essential documents.

After careful consideration, the Tribunal refused the request to postpone. The Respondents appeared coy in revealing precisely where they were going and failed to provide any evidence in that regard. They also provided no explanation of the basis of their alleged defence to the application, nor of why they were unable to instruct someone to appear on their behalf as representative. In the absence of such details, the Tribunal considered the prejudice to the Applicants of postponing the Case Management Discussion outweighed the prejudice to the Respondents in proceeding. That was particularly so standing the high level of rent arrears incurred, which earlier e-mail correspondence from the Respondents lodged by the Applicants appeared to confirm the Respondents did not dispute that they were liable to pay to the Applicants.

By e-mail to the Tribunal of 20th March 2024, the Applicant provided an updated rent arrears statement disclosing arrears to that date of £31,500.00. That statement had been intimated to the Respondents by the Tribunal, and in earlier e-mail correspondence produced therewith the Respondents did not dispute that they were liable to pay this amount to the Applicants.

Case Management Discussion

A Case Management Discussion was held at 14:00 on 21st March 2024 by Tele-Conference. The Applicants participated and were represented by Mr Gallagher, solicitor. The Respondents did not participate, nor were they 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 Gallagher requested the Tribunal to amend the sum sought in the application to £31,500.00 in terms of Rule 14A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended. He asked the Tribunal to shorten the period of notice in Rule 14A from 14 days to 1 day in terms of Rule 16A *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Tribunal consented to the amendment and shortened the period of notice to 1 day. The updated rent arrears statement disclosing arrears to 20th March 2024 of £31,500.00 indicated to the Respondents that that was the amount which the Applicants sought in the application, and the Respondents did not dispute that they were liable to pay this amount to the Applicants in e-mail correspondence between the parties in February 2024.

Mr Gallagher invited the Tribunal with reference to the application and papers to grant an order for payment of the sum of £31,500.00 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.

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 arrears information provided, and the submissions made by Mr Gallagher, and was satisfied that these disclosed an outstanding balance of rent arrears due of £31,500.00. Rental of £3,500.00 per month was payable in advance in terms of clause 7 of the private residential tenancy agreement. 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 Respondents jointly and severally to the Applicants of the sum of £31,500.00 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.



21 March 2024

Legal Member/Chair

Date