

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with 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 (“2016 Act”)

Chamber Ref: FTS/HPC/CV/23/4454

Re: 11 Woodfoot Road, Hamilton, ML3 8LP (“the Property”)

Parties:

Mr David Moncur and Mrs Diane Moncur, both of 25 The Highlands, Bexhill-on-Sea, TN39 5HL, as partners of and trustees for the FIRM OF D & D MONCUR (“the Applicants”)

Levent Erdem, of 16 St Annes Court, Hamilton, ML3 7QD (“the Respondent”)

Tribunal Member:

Pamela Woodman (Legal Member)

Present:

The case management discussion took place at 10am on Thursday 25 April 2024 by teleconference call (“**the CMD**”). The Applicants were not present but were represented by Ms Tracey Campbell-Hynd of TCH Law. The Respondent was not present and was not represented at the CMD. The clerk to the Tribunal was Rachael Pender.

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment for £2,317.74 (together with interest thereon) be granted against the Respondent in favour of the Applicants.

BACKGROUND

1. An application had been made to the Tribunal under section 71(1) of the 2016 Act and in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended. More specifically, the application was made in

terms of rule 111 (*Application for civil proceedings in relation to a private residential tenancy*) of the HPC Rules.

2. The order sought from the Tribunal was an order for payment against the Respondent in the sum of £2,317.74 (together with interest thereon at the judicial rate) in respect of rent arrears relating to the period from 26 August 2022 to 28 January 2023, the Respondent's deposit of £975 being noted as already having been recovered from Safe Deposits Scotland (which had reduced the amount of rent arrears down from £3,292.74).
3. Various documents were provided in support of the application (dated 12 December 2023), including copies of the following:
 - a. Scottish private residential tenancy agreement between "D & D Moncur" and the Respondent dated 26 January 2022 ("**Tenancy Agreement**"), providing for:
 - i. a start date of 26 January 2022;
 - ii. rent of £650 per calendar month, payable in advance;
 - iii. payment of a rent deposit of £975; and
 - iv. notices to be sent by e-mail to the e-mail addresses set out in the Tenancy Agreement.
 - b. Rent statement covering the period from 27 June 2022 to 30 May 2023, which stated that there were arrears of £2,317.74 as at 28 March 2023, the amount of £975 from "SDS" (presumed to be Safe Deposits Scotland) shown as a credit on 28 March 2023.
 - c. Formal demand for payment issued by TCH Law dated 19 October 2023.
4. A notice of acceptance of the application was issued by the Tribunal dated 21 February 2024 under rule 9 of the HPC Rules, which confirmed that the application paperwork had been received by the Tribunal between 12 December 2023 and 17 January 2024.
5. The Respondent was sent notice of the CMD by letter dated 18 March 2024, which was confirmed (in the certificate of intimation from Andrew Richardson of Walker Love, sheriff officers) as having been served on 19 March 2024 by posting through the letterbox at the Respondent's address noted above.
6. The Respondent had not provided written submissions and had not otherwise engaged with the Tribunal in relation to these proceedings.
7. This decision arises out of the CMD.

PRELIMINARY MATTER

8. The Tribunal noted that the title sheet provided in respect of the Applicants' period of ownership of the Property narrated the registered proprietor as:

“DAVID INGLIS MONCUR and DIANE HENRIETTA SUTHERLAND MONCUR partners of the FIRM OF D & D MONCUR having a place of business at Jinglara, Drum, Kinrosshire as Trustees for that firm and the Partners thereof present and future and their successors in office as such Trustees and the survivor of them as Trustees and Trustee aforesaid.”

9. The Tenancy Agreement narrated the landlord as “D & D Moncur”. It was not clear if this was intended to refer to the firm of D & D Moncur, or alternatively David and Diane Moncur, as partners of and trustees for that firm, or alternatively David and Diane Moncur, as individuals.
10. Given that the registered proprietors of the Property were David Moncur and Diane Moncur as partners of and trustees for the firm of D & D Moncur, the Tribunal determined (on the balance of probabilities) that the appropriate interpretation was that the landlords were David and Diane Moncur, as partners of and trustees for the firm of D & D Moncur (and so they were entitled to receive rent under the Tenancy Agreement in that capacity).
11. The Applicants’ representative confirmed that she did not object to this interpretation.
12. Accordingly, the designation of the Applicants in this case was updated so as to make it clear that they were acting as partners of and trustees for the firm of D & D Moncur.

PROCEEDINGS, NAMELY THE CMD

13. The Tribunal was satisfied that the CMD could proceed in the absence of the Respondent.
14. The Applicants’ representative confirmed that the rent deposit of £975 had been returned to the Applicants by Safe Deposits Scotland and so (after that receipt) the arrears were £2,317.74.
15. The Applicants’ representative confirmed that she understood that the Respondent had left the Property on 28 January 2023. She agreed that the remaining arrears of rent of £2,317.74 (after deduction of the rent deposit of £975) had been calculated up to (and including) 28 January 2023.
16. The Applicants’ representative confirmed that no further payments had been received from the Respondent and that there had been no response to the demands for payment (or any other communication from the Respondent) since at least October 2023.
17. The Applicants’ representative asked for interest on the principal amount at the judicial rate of interest.

FINDINGS IN FACT

18. The Tribunal was satisfied, on the balance of probabilities, that (between 26 August 2022 and 28 January 2023):
- a. the Applicants were the registered proprietors of the Property, the Tribunal having received copies of the Tenancy Agreement and also the title sheet for the Property (title number LAN99066) updated to (respectively) 22 July 2019 and 11 July 2023; and
 - b. each of the Applicants was a registered landlord of the Property, the Tribunal having received copies of renewal e-mails dated 17 May 2022 from the Scottish Landlord Register.
19. The Tribunal was satisfied that rent at a rate of £650 per calendar month was payable under the Tenancy Agreement in respect of the Property.
20. The Tribunal noted that the rent calculated on a daily basis was £21.37 per day (being £7,800 per annum, i.e. 12 months at £650 per calendar month, divided by 365 days).
21. The Tribunal was satisfied, on the balance of probabilities, that there were outstanding arrears of rent to (and including) 28 January 2023 of £2,317.74.

REASONS FOR DECISION

22. The Tribunal found, on the balance of probabilities, that £2,317.74 was due and payable by the Respondent to the Applicants.

DECISION

23. The Tribunal granted the application under section 71(1) of the 2016 Act for an order for payment in the sum of £2,317.74 (two thousand three hundred and seventeen pounds and seventy-four pence sterling only), together with interest thereon at the rate of 8% (eight per centum) per annum running from the date of the decision of the Tribunal (being 25 April 2024) until payment in full.

Right of Appeal

In terms of Section 46 of the Tribunals (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.

Pamela Woodman

25 April 2024

Legal Member (chair)

Date