



Decision 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/23/3813

Re: Property at G/3 72, Arklay Street, Dundee, DD3 7LH (“the Property”)

Parties:

Mr Michael Johnston, Mrs Theresa Johnstone, Flat 1, Magnum House, 138 Seagate, Dundee, DD1 2HF (“the Applicants”)

Mr Ayden Binnie, Mr Ross McCallum, G/3 72 Arklay Street, Dundee, DD3 7LH (“the Respondents”)

Tribunal Members:

Nicola Irvine (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the First Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Order for Payment against the Respondents in favour of the Applicants in the sum of £8,870.21.

Background

1. The Applicants submitted an application under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The Applicants sought an order for payment in respect of rent arrears said to have been incurred by the Respondents.
2. A Convenor of the Housing and Property Chamber (“HPC”) having delegated power for the purpose, referred the application under Rule 9 of the Rules to a case management discussion (“CMD”).
3. Letters were issued on 20 May 2024 informing both parties that a CMD had been assigned for 25 June 2024 at 10am, which was to take place by conference call. In that letter, the parties were also told that they were required to take part in the discussion and were informed that the Tribunal could make a decision today on the application if the Tribunal has sufficient information and

considers the procedure to have been fair. The Respondents were invited to make written representations by 10 June 2024. No written representations were received by the Tribunal.

4. On 18 June 2024 the Applicants' representative sent an email to the Tribunal, attaching an updated rent statement and advising that the Applicants wanted to increase the sum sought. That email had been copied to the First Respondent and to Dundee Law Centre who represent the Second Respondent.

The case management discussion – 25 June 2024

5. The CMD took place by conference call. The Applicants were represented by Mr Campbell and the Second Respondent by Mrs McLanders. The First Respondent did not take part in the conference call and the discussion proceeded in his absence. This case called alongside a related case which proceeds under chamber reference FTS/HPC/EV/23/3805. The Second Respondent accepted that the updated rent statement lodged is accurate and accepted that the sum £8,870.21 remains outstanding. Notwithstanding that acceptance, the Second Respondent opposed the application for a payment order. The Second Respondent has been making payments towards the rent account from his universal credit claim. Although full rental payments have not been made, the Second Respondent considers that he has paid his half.
6. The Applicants' representative moved to amend the sum sought to £8,870.21. He also sought interest at the rate of 6% which he described as the going rate.

Findings in Fact

7. The parties entered into a private residential tenancy which commenced 1 August 2021.
8. The contractual monthly rent was £425 per month, payable in advance.
9. The Respondents have accrued rent arrears of £8,870.21.

Reason for Decision

10. The Tribunal proceeded on the basis of the documents lodged and the submissions made at the CMD. The Second Respondent accepted that the rent statement was accurate although he did oppose the application for a payment order. The obligation to pay rent is a joint and several one. The Tribunal was satisfied that the Respondents have accrued rent arrears amounting to £8,870.21. The Tribunal granted an order in that sum. There is no contractual term which provides for interest due on outstanding rent. The Tribunal was not persuaded to exercise its discretion to award interest.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

Nicola Irvine

Legal Member/Chair

25 June 2024

Date