



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

Chamber Ref: FTS/HPC/CV/24/0394

Re: Property at 6 Drainie Way, Lossiemouth, Moray, IV31 6SZ (“the Property”)

Parties:

Vaughan Ralph, Flat 36A, Homefyld House, 199-207 Whitegate Drive, Blackpool, FY3 9EN (“the Applicant”)

Zoe Edwards, Roy Geddes, 6 Drainie Way, Lossiemouth, Moray, IV31 6SZ; 14 Golf View Crescent, New Elgin, Elgin, IV30 6JP (“the Respondents”)

Tribunal Members:

Graham Harding (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the Respondents to the Applicant in the sum of £4455.00 with interest at the rate of 5% per annum from the date of the decision until payment.

Background

1. By application dated 24 January 2024 the Applicant’s representatives, Bannatyne Kirkwood France & Co, Solicitors, Glasgow, applied to the Tribunal for an order for payment under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant’s representatives submitted a copy of the tenancy agreement and a rent statement in support of the application.
2. By Notice of Acceptance dated 23 February 2024 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondents by Sheriff Officers on 30 April 2024.
4. By email dated 23 May 2024 the Applicant's representatives submitted an updated rent statement to the Tribunal together with an application to amend the sum claimed to £4455.00.

The Case Management Discussion

5. A CMD was held by teleconference on 5 June 2024. The Applicant did not attend but was represented by Ms Wooley from the Applicant's representatives. The Respondents attended in person.
6. Mr Geddes advised the Tribunal that he had moved out of the property at the beginning of 2021. Ms Edwards explained that attempts had been made to have the tenancy transferred into her sole name without success but that in August 2023 it had been almost agreed that her mother would move into the property with her as a joint tenant but then her mother had been taken ill and had subsequently died. Ms Edwards suggested that she alone was responsible for the failure to pay rent.
7. Mr Geddes confirmed that he was not opposing the order sought by the Applicant and that he accepted that he remained a tenant although not living in the property.
8. The Tribunal ascertained from The Respondents that it was agreed that the tenancy had commenced on 11 December 2019 at a rent of £495.00 per calendar month. It was also accepted that the current rent due amounted to £4455.00. The Tribunal being satisfied that the level of arrears was accepted allowed the application to be amended to increase the sum claimed to £4455.00 with interest thereon from the date of the decision.
9. For the Applicant Ms Wooley referred the Tribunal to Clause 8 of the tenancy agreement where reference was made to interest being applied to any late payment of rent at the rate of 8% per annum until payment. In response to a query from the Tribunal, Ms Wooley accepted that although there was a contractual right to interest in terms of the tenancy agreement any award of interest in terms of Rule 41A of the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Rules") was at the discretion of the Tribunal but pointed out that the arrears had been outstanding since last year and submitted it was reasonable that interest be applied to any sum awarded.

Findings in Fact

10. The parties entered into a Private Residential Tenancy that commenced on 11 December 2019 at a rent of £495.00 per calendar month.

11. The Second Respondent, Mr Roy Geddes moved out of the property at the beginning of 2021.
12. Attempts to transfer the tenancy into the sole name of the First Respondent, Ms Zoe Edwards were unsuccessful.
13. The Respondents accrued rent arrears from June 2023 and have remained in arrears since that time.
14. At the date of the CMD the Respondents owed rent of £4455.00.
15. The Respondents acknowledge the said sum is due to the Applicant.

Reasons for Decision

16. The Tribunal was satisfied from the written representations and documents produced together with the oral submissions from Ms Wooley and the Respondents that the parties entered into a Private Residential tenancy that commenced on 11 December 2019 at a rent of £495.00 per Calendar month. The Tribunal was also satisfied that although Mr Geddes moved out of the property at the beginning of 2021 the tenancy remained in joint names. The Tribunal was also satisfied that the rent due by the Respondents at the date of the CMD amounted to £4455.00.
17. The Tribunal took account of the contractual provisions in the tenancy agreement for interest to be applied in the event of delay in the payment of rent and whilst considering that it was reasonable in the circumstances and in terms of Rule 41A of the 2017 Rules to include interest on the order to be granted considered that it should be at the rate of 5% per annum being a reflection of current interest rates available in the market.

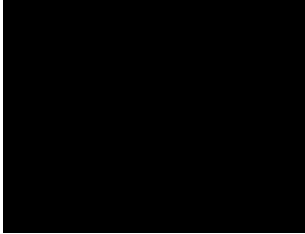
Decision

18. The Tribunal being satisfied it had sufficient information before it to allow it to make a decision without the need for a hearing determined that the Applicant was entitled to an order for payment by the Respondents to the Applicant in the sum of £4455.00 with interest thereon at the rate of 5% per annum from the date of the decision 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.



**Graham Harding
Legal Member/Chair**

**5 June 2024
Date**