

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision with Statement of Reasons in relation to a request for review under Rule 39 of the First-tier Tribunal for Scotland Housing and Property Chamber (Scotland) Regulations 2017 (“the Procedure Rules”) and Section 43 of the Tribunals (Scotland) Act 2014 (“the 2014 Act”)

Chamber Refs: FTS/HPC/CV/23/3650

Property at 2/1, 316 Gartcraig Road, Glasgow, G33 3PB (“the Property”)

Parties:

Lowther Homes Limited, 25 Cochrane Street, Glasgow, G1 1HL (“the Applicant”)

Mr Damian Roginski, 2/1, 316 Gartcraig Road, Glasgow, G33 3PB (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The Tribunal determines that an amended decision and order should be issued in terms of Rule 36(a) of the Procedure Rules.

Background

1. The Applicant lodged an application seeking an order for payment in relation to unpaid rent. A tenancy agreement and rent statement were lodged with the application. A copy of the application was served on the Respondent and the parties were notified that a case management discussion (“CMD”) would take place by telephone conference call on 19 March 2024 at 10am. Following the CMD, the Tribunal determined that the application should proceed to an in person hearing, together with a related application for an eviction order. Prior to the hearing, the Applicant submitted an updated rent statement showing a balance due of £11,293.77.
2. The hearing took place at Glasgow Tribunals Centre on 30 July 2024. The Applicant was represented by Mr Adams. The Respondent attended. At the start of the hearing the Respondent confirmed that the sum specified in the updated rent statement was accurate and that the application was not opposed. The eviction order was opposed, and the Tribunal heard evidence in

relation to that application.

3. Following the hearing the Tribunal refused the application for an eviction order and granted the payment application. The Tribunal determined that the Applicant was entitled to a payment order for the sum of £11,293.77. The decisions with statement of reasons were issued on 21 August 2024.
4. On 29 August 2024, the Applicant submitted a request for review. They stated. " ...the Application included a crave for interest on the sum claimed at the rate of 2% p.a. over the Royal Bank of Scotland Base Rate from the date of the Order until payment in terms of clause 4.3 of the tenancy agreement. The decision omits to include the provision for interest from the date of the Order until payment and we should be obliged if this could be corrected in the interests of justice. We confirm that this is being intimated to the Respondent."

Reasons for decision

5. Section 43 Tribunal (Scotland) Act 2014 states -

(1) Each of the First-tier Tribunal and the Upper Tribunal may review a decision made by it in any matter in a case before it.

(2) A decision is reviewable -

(a) At the Tribunal's own instance, or

(b) At the request of a party in the case.

6. Regulation 39 of the Procedure Rules states -

(1) The First-tier Tribunal may either at its own instance or at the request of a party review a decision made by it except in relation to applications listed in Rule 37(3)(b) to (j), where it is in the interests of justice to do so.

(2) An application for review under Section 43(2)(b) of the Tribunals Act must -

(a) Be made in writing and copied to the other parties.

(b) Be made within 14 days of the date on which the decision is made or within 14 days of the date that the written reasons (if any) were sent to the parties; and

(c) Set out why a review of the decision is necessary.

7. Regulation 36 of the Procedure Rules states;- The First-tier Tribunal may at any time correct any clerical mistake or other accidental slip or omission contained in a decision, order or any document produced by it, by

(a) Sending notification of the amended decision or order, or a copy of the amended document to all parties; and

- (b) Making the necessary amendment to any information published in relation to the decision, order or document.
8. The Tribunal is satisfied that the request for review is timeous, and that the Applicant has otherwise complied with Rule 39.
 9. The Tribunal notes that the application for a payment order included a request for interest as stated in the request for review. This application was served on the Respondent. The Tribunal also notes that clause 4.3 of the tenancy agreement states that the Applicant is entitled to charge interest at 2% above the base rate of the Royal Bank of Scotland on “late payment of rent”. The application was not opposed by the Respondent who conceded that the rent was due.
 10. Rule 41A states that the Tribunal “may include interest when making an order for payment”. The interest rate to be applied is either as – “(a) stated in the relevant tenancy agreement, or (b) ordered by the First Tier Tribunal” and runs “from the date of the decision of the First Tier Tribunal.”
 11. The Tribunal is satisfied that the failure to include interest in the decision and order issued on 21 August 2024, is the result of an accidental slip or omission on the part of the Tribunal. The Tribunal therefore determines that an amended decision and order should be issued granting the order for payment with interest at the rate of 7%, being 2% above the RBS base rate at the relevant date, from the date of the amended decision and order.

Josephine Bonnar

Josephine Bonnar, Legal Member

15 September 2024

