

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 70(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/24/2041

Re: Property at 18 2F1 Viewforth Gardens, Edinburgh, EH10 4ET (“the Property”)

Parties:

Mr Paul John McWilliams, 8 Western Terrace, Edinburgh, EH12 5QF (“the Applicant”)

Mr Kenny Taylor, 18 2F1 Viewforth Gardens, Edinburgh, EH10 4ET (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Mike Scott (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for payment against the Respondent in the sum of Two thousand four hundred and ninety five pounds (£2495) Sterling together with interest at the rate of 8% per annum from the date of decision until payment.

Background

- 1 By application to the Tribunal dated 2 May 2024 the Applicant sought an order for payment against the Respondent in respect of unpaid rent arrears. In support of the application the Applicant provided a copy of the tenancy agreement, a rent statement and copy correspondence sent from the Applicant’s representative to the Respondent regarding his rent arrears. The Applicant further provided a letter of consent from the joint owner of the property Lisa McWilliams consenting to the application proceeding in the Applicant’s sole name.
- 2 By Notice of Acceptance of Application a Legal Member with delegated powers from the Chamber President intimated that there were no grounds upon which to reject the application. A Case Management Discussion was

therefore assigned for 7 October 2024 and a copy of the application paperwork together with the date and time of the Case Management Discussion with instructions for joining the teleconference was served upon the Respondent by Sheriff Officers in accordance with Rule 17(2) of the Rules of Procedure. No response to the application was received from the Respondent.

- 3 On 20 September 2024 the Applicant's representative emailed the Tribunal with additional representations. They advised that the arrears had increased to £2595 and produced a letter dated 20 September 2024 that had been sent to the Respondent from the Applicant's representative regarding his rent arrears. Following a request from the Tribunal the Applicant's representative provided an updated rent statement by email dated 26th September 2024 confirming that the arrears had reduced to £2495.

Case Management Discussion

- 4 Ms Anderson of Complete Clarity Solicitors appeared on behalf of the Applicant. The Applicant himself was in attendance along with his wife Lisa McWilliam. The Respondent was not present. The Tribunal noted that he had received service of the application paperwork, which included the date and time of the Case Management Discussion in accordance with Rule 17(2) of the Rules of Procedure and therefore determined to proceed in his absence.
- 5 Ms Anderson addressed the Tribunal on the Applicant's behalf. She advised that the Applicant was seeking to amend the sum sought to the reduced figure of £2495 together with interest at the rate of 8% per annum. Communication with the Respondent had been attempted by both the Applicant and the Applicant's representative but there had been no offers of payment forthcoming. The Respondent's payments had been inconsistent and he had put forward no proposals for payment of the rent and arrears. Due to the inconsistency and unpredictability of the Respondent's conduct the Applicant sought a payment order against him.

Findings in Fact

- 6 The parties entered into a Tenancy Agreement in respect of the property dated 13 March 2019.
- 7 In terms of Clause 3 of the said tenancy agreement the Respondent undertook to make payment of rent at the rate of £850 per calendar month. Clause 3 further provided that interest would be payable on any unpaid rent at the rate of 8% per annum.
- 8 As at the date of the Case Management Discussion rent arrears in the sum of £2495 were outstanding.
- 9 Despite repeated requests the Respondent has refused or delayed in making payment of the sum due.

Reasons for Decision

- 10 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Respondent had not made any written representations and had not put forward any objection to the application. It was therefore clear that there were no matters in dispute that would require a hearing to be fixed.
- 11 The Tribunal accepted, based on its findings in fact, that the Respondent had undertaken to pay rent at the rate of £850 per month and had accrued rent arrears in the sum of £2495. The Tribunal was also satisfied that the parties had agreed a contractual interest rate of 8% per annum on any unpaid arrears under the terms of the tenancy agreement. The Respondent had not put anything forward to contradict the facts outlined in the application, and by Ms Anderson at the Case Management Discussion.
- 12 Accordingly the Tribunal made an order for payment in the sum of £2495 together with interest at the rate of 8% per annum from the date of decision until payment.
- 13 The decision of the Tribunal was unanimous.

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.

Ruth O'Hare

7 October 2024

Legal Member/Chair

Date