



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/24/0497

Re: Property at 1/8 Inglis Green Rigg, Edinburgh, EH14 2LF (“the Property”)

Parties:

Andrew May, Elaine May, 24 Pullar Avenue, Bridge of Allan, Stirling, FK9 4SJ (“the Applicants”)

Joern Pfaff, Anouck Garenaux, 1/8 Inglis Green Rigg, Edinburgh, EH14 2LF (“the Respondents”)

Tribunal Members:

Graham Harding (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicants were entitled to an order for payment by the Respondents to the Applicants in the sum of £11087.61 with interest at the rate of 4% per annum from the date of the decision until payment.

Background

1. By application dated 31 January 2024 the Applicants’ representatives, Bannatyne Kirkwood France & Co, solicitors, Glasgow, applied to the Tribunal for an order for payment in respect of alleged rent arrears arising from the Respondents’ tenancy of the property. The Applicants’ representatives submitted a copy of a tenancy agreement and a rent statement in support of the application.
2. By notice of Acceptance dated 1 March 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 18 April 2024.
4. By email dated 29 April 2024 the First Respondent submitted written representations to the Tribunal.
5. By email dated 16 May 2024 the Applicants' representatives submitted an updated rent statement to the Tribunal.
6. A Case Management Discussion ("CMD") was held by teleconference on 30 May 2024. The Applicants attended in person and were represented by Ms Wooley from Bannatyne Kirkwood France & Co, Glasgow. The First Respondent attended in person. The Second Respondent did not attend. After explaining to the parties the purpose of a CMD the Tribunal noted that the Second Respondent was no longer residing at the property and that the First Respondent did not know where the Second Respondent was living. The First Respondent said the First Respondent's papers were still at the property after being given to him by the Sheriff Officers. The Tribunal queried with Ms Wooley if the Applicants had been aware that the Second Respondent had moved out of the property and was advised that they had been unaware until they received the First Respondent's written representations. Ms Wooley said that as the Second Respondent had not advised the Applicants of a change of address the Notices and case papers had been properly served. The Tribunal determined to proceed in the absence of the Second Respondent. The Tribunal ascertained from the parties that it was agreed that the Tenancy commenced on 28 May 2019 at a rent of £895.00 per calendar month and that the rent had increased in July 2022 to £958.35 per month and again increased in August 2023 to £987.51. The Tribunal noted Ms Wooley had submitted a rent statement by email on 16 May 2024 showing rent due of £6812.57. The Tribunal queried if the Applicants were still only seeking the sum claimed in the application namely £3850.04 and noted that they wished to amend the sum claimed to £6812.57. The Tribunal explained that this would require an application to amend in terms of Rule 14A of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The Tribunal made an oral direction to the First Respondent that he must within the following six weeks submit further written representations to the Tribunal administration detailing the amount he claims should be deducted from the rent due for the alleged failings on the part of the Applicants in respect of repairs and in particular issues with the heating system. The Tribunal also directed the First Respondent to submit within the same period an indexed and paginated Inventory of Productions with any documents and receipts the First Respondent intends to rely on at the hearing. The Tribunal adjourned the proceedings to a hearing.
7. The First Respondent failed to comply with the Tribunal's directions and did not communicate further with the Tribunal.
8. By email dated 8 October 2024 the Applicants' representatives submitted an application to amend the sum claimed to £11087.61.

9. By email dated 15 October 2024 the Applicants' representatives submitted a List of Witnesses.

The Hearing

10. A hearing was held by teleconference on 22 October 2024. The Second Applicant Mrs Elaine May attended in person and was represented by Miss Alexandra Wooley from the Applicants' representatives. Neither of the Respondents attended nor were they represented. The Tribunal being satisfied that proper intimation of the hearing had been given to them determined to proceed in their absence.
11. By way of a preliminary matter the Tribunal noted that despite having given the First Respondent Directions at the CMD that he had to provide the Tribunal with further written representations detailing the amount he claimed should be deducted from the rent due for the alleged failings on the part of the Applicants the First Respondent had failed to do this and had also failed to submit any receipts in respect of the repairs he had said he had paid for. The Tribunal queried with Miss Wooley what her position was in regards to the Respondents failure to comply with the Directions and Miss Wooley submitted that the application should proceed and that the Tribunal should grant the order sought. Miss Wooley said that the First Respondent had said that he had the ability to provide documentation to support his claim but had failed to do so and had not communicated at all with the Tribunal nor had he offered any explanation or reason for his nonattendance at the hearing.
12. Miss Wooley referred the Tribunal to her email of 8 October 2024 and explained that the Respondents had been evicted from the property on 7 October 2024 and that the rent due up to that date was £11087.61. Miss Wooley advised the Tribunal that the Respondents deposit had not yet been dealt with but that the Applicants would be submitting a claim to the Tenancy Deposit Scheme for the return of the deposit as the Respondents had caused damage to the property in addition to having rent arrears. Miss Wooley asked the Tribunal to allow the application to be amended in terms of the application to amend and thereafter to grant an order for payment in the amended sum of £11087.61 together with interest at the rate of 8% per annum. Miss Wooley advised the Tribunal that Mrs May could give evidence if required.
13. The Tribunal accepted the oral submissions of Miss Wooley and found it unnecessary to hear further from Mrs May. The Tribunal allowed the sum claimed to be amended to £11087.61.

Findings in Fact

14. The parties entered into a Private Residential Tenancy that commenced on 28 May 2019 at a rent of £895.00 per calendar month.
15. The rent at the end of the tenancy was £987.51 per month.

16. The tenancy ended on 18 September 2024 but the Respondents remained in occupation of the property until 7 October 2024 when they were evicted.
17. The rent due by the Respondents at the date of their eviction amounted to £11087.61.

Reasons for Decision

18. The Tribunal was satisfied from the written representations and documents submitted by the Applicant's representatives together with the oral submissions that the Applicants were entitled to an order for payment by the Respondent in the sum of £11087.61. The Respondents were given the opportunity to provide detailed written submissions as to why the sum claimed was not due and to provide receipts for repairs to the property it was claimed they had carried out. They failed to comply with the Tribunal's directions in this regard and failed to attend the hearing and in the circumstances the Tribunal was satisfied that the order should be granted.
19. The Applicants' representatives sought interest on the sum sought at the judicial rate of 8% and suggested that this rate was reasonable given the Respondents lack of engagement and also given that at the CMD the First Respondent had not disputed that there were rent arrears but had failed to provide an indication of how much he accepted was in arrears. In terms of rule 41A of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations) 2017 the Tribunal may include interest when making an order for payment at a rate ordered by the Tribunal. The Tribunal is not obliged to apply the judicial rate and the tenancy agreement made no provision for interest. In the circumstances the Tribunal considered that it was appropriate to award interest on the sum claimed and that an appropriate rate was 4% per annum to reflect current interest rates.

Decision

20. The Tribunal having carefully considered the oral submissions and the written representations and documents before it finds the Applicants entitled to an order for payment by the Respondents in the sum of £11087.61 with interest at the rate of 4% 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**

**22 October 2024
Date**