



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/CV/24/3141

Re: Property at 7/7 Tait Wynd, Edinburgh, EH15 2RJ (“the Property”)

Parties:

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

Mrs Marie Knight, Mr Richard Knight, 7/7 Tait Wynd, Edinburgh, EH15 2RJ; 7/7 Tait Wynd, Edinburgh, EH15 2RJ (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment in the sum of Four thousand and thirty four pounds and thirty seven pence (£4034.37) Sterling with interest at the rate of 4% per annum above the Bank of Scotland base rate, and a time to pay direction ordering payments of £200 per week, from the date of this decision until the full amount has been paid.

Background

1 By application to the Tribunal dated 9 July 2024 the Applicant sought a payment order against the Respondents under Rule 17 of the Rules and section 16 of the Housing (Scotland) Act 2014 in respect of unpaid rent in the sum of £2848.99 together with interest at the rate of 4% per annum above the Bank of Scotland base rate from the date of decision until payment. In support of the application the Applicant provided:-

- (i) Short assured tenancy agreement between the parties dated 24 and 27 August 2010; and
- (ii) Rent Statement.

- 2 By Notice of Acceptance of Application dated 31 August 2024 a Legal Member of the Tribunal with delegated powers from the Chamber President intimated that there were no grounds upon which to reject the applications under Rule 8 of the Rules. The application was therefore referred to a Case Management Discussion (“CMD”) to take place by teleconference on 17 December 2024. Notification was given to the parties under Rule 17(2) of the Rules. Said notification was served upon the Respondents by Sheriff Officers on 8 November 2024. Both parties were invited to make written representations.
- 3 On 29 November 2024 the Tribunal received an email from the Community Help and Advice Initiative (“CHAI”) advising that they had been instructed to represent Marie Knight. CHAI provided a written mandate from Mrs Knight in support of this.
- 4 On 2 December 2024 the Tribunal received an email from the Applicant with an updated rent statement. The Applicant sought an increase in the sum claimed under the payment application to £6638.69.
- 5 On 11 December 2024 the Tribunal received written representations from CHAI on behalf of the Respondents.

Case Management Discussion

- 6 The CMD took place on 17 December 2024 by teleconference. The Applicant was represented by Mr David Adams of the Wheatley Housing Group Litigation Team. The Respondents were represented by Mr Sam Donegan of CHAI.
- 7 The Tribunal proceeded to hear submissions from the parties on the application.
- 8 Mr Adams confirmed that the Applicant sought an order in the amended sum of £5438.69 with interest at the rate of four per cent per annum from the date of decision until payment. Mr Donegan submitted that it would not be reasonable to make a payment order due to the fact that there was a structured financial recovery plan in place and in terms of the Respondents’ personal circumstances. The payment order would have a detrimental impact on the Respondents and would cause additional worry and stress.
- 9 Having heard from the parties the Tribunal held a short adjournment of the CMD, at which point parties left the call, before resuming the proceedings. The Tribunal noted that the Respondents admitted that the rent arrears were due. Whilst Mr Donegan had outlined a defence of reasonableness, the Tribunal was not persuaded that this constituted a valid defence to a contractual claim for

payment. However, having scheduled a hearing in respect of a conjoined application for an eviction order, the Tribunal considered it would be prudent to adjourn the CMD in respect of the payment application to the date of the hearing so that any order made could accurately reflect the balance of arrears due.

- 10 The second CMD took place on 27 February 2025 by videoconference. The Applicant was represented again by Mr Adams. Mr Donegan represented the Respondents.
- 11 Mr Adams moved the Tribunal to make an order for payment with interest at the rate of 4% per annum above the Bank of Scotland base rate from the date of the decision until payment, and a time to pay direction for payments of £200 per week. He referred to the provisions of the tenancy agreement, which stated that interest may be imposed at that rate.
- 12 Mr Donegan objected to the inclusion of interest. He referred to Rule 41A of the Rules which gave the Tribunal discretion on the issue. He submitted that it must be reasonable in all the circumstances of the case for interest to be applied. The Tribunal did not require to apply interest, even if the debt existed, and had to consider fairness before exercising its discretion. Mr Donegan acknowledged the provisions of the tenancy agreement, but again highlighted that the imposition of interest was discretionary in terms of the wording, in that the Applicant may choose to do so. The tenancy agreement did not make it clear when interest would be applied. Mr Donegan explained that the Applicant was only choosing to seek interest now as a result of the Tribunal proceedings. The Respondents' position was that the Applicant had not acted reasonably in their dealings with the Respondents. The Respondents had not had fair notice that interest may be sought. There had been no satisfactory engagement by the Applicants regarding the rent arrears. The Applicant had previously refused to agree to a payment plan with the Respondents. The Respondents had been reasonable in making voluntary payments towards the arrears. They intended to clear the arrears within 20 weeks. They were exceeding what was reasonably expected of them. Mr Donegan urged the Tribunal to exercise its discretion under Rule 41A and refuse the motion for interest. It was unfair in the particular circumstances of this case.
- 13 Mr Adams submitted that there had to be some form of sanction if payments were not made in accordance with the time to pay direction. There was a contractual obligation on the Respondents' part to pay interest on unpaid rent. The Tribunal had to apply the law of the contract. Rule 41A would only apply in the event that the tenancy agreement was silent on the matter of interest. It was reasonable for interest to be applied if payments were not made as agreed.

- 14 The Tribunal held a short adjournment to deliberate, at which point parties left the call, before resuming the CMD and confirming its decision.

Findings in Fact

- 15 The Respondents entered into a tenancy agreement with Malcolm Homes Ltd dated 27 August 2010.
- 16 In terms of Clause 3 of the said tenancy agreement the Respondents undertook to pay rent at the rate of £563.55 per calendar month.
- 17 In terms of Clause 7 of the said tenancy agreement the Respondents agreed that interest may be charged at the rate of “*4% over Bank of Scotland Base Rate from time to time on all outstanding rent and/or other sums due under this Agreement from the due date for payment until paid.*”
- 18 The Applicant subsequently acquired the assets of Malcolm Homes Ltd, which included the property with the Respondents as sitting tenants.
- 19 The rent has been increased incrementally over the term of the tenancy. The current rent payable is £742.27 per calendar month.
- 20 As at the date of this decision rent arrears in the sum of £4037.34 are outstanding.

Reasons for decision

- 21 The Tribunal was satisfied that it had sufficient information upon which to reach a decision on this application, based on the application paperwork, written representations and the submissions from the parties.
- 22 Based on its findings in fact the Tribunal accepted that the Respondents were due to pay rent at the rate of £742.27 per month to the Applicant and that arrears of rent in the sum of £4037.34 had accrued as at the date of this decision. The Respondents did not dispute that the arrears were due.
- 23 The Tribunal carefully considered whether to award interest on the debt owed. The Tribunal accepted that in terms of Rule 41A it had a discretion as to whether to include interest when making an order for payment, regardless of whether or not the terms of the tenancy agreement make provision for this.
- 24 The Tribunal concluded that the Respondents had, or ought to have been, aware that the Applicant may seek interest on any unpaid rent, having signed the tenancy agreement agreeing to those terms. The Applicant therefore has a contractual right to seek interest should they choose to do so. Whilst the

Respondents had challenged the Applicant's management of the rent arrears, ultimately it had taken the raising of proceedings to effect a resolution to the situation. The arrears were also significant, having increased since the application was raised. Accordingly, having taken into account the particular circumstances of this case the Tribunal determined to exercise its discretion and include interest as per the terms of the tenancy agreement under Rule 41A(2)(a).

25 The Tribunal therefore determined to make an order for payment in the sum of £4037.34 together with interest at the rate of 4% per annum above the Bank of Scotland base rate, and a time to pay direction for payments of £200 per week.

26 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

27 February 2025

Legal Member/Chair

Date