



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/24/5594

Re: Property at 6/1 Royston Mains Place, Edinburgh, EH5 1LQ (“the Property”)

Parties:

Kenneth Whittle, 23 East Clapperfield, Edinburgh, EH16 6TU (“the Applicant”)

Maciej Fituch, 14/15 Magdalene Crescent, Edinburgh, EH15 3EE (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment in the sum of Seven thousand nine hundred and twenty four pounds and sixty seven pence (£7,924.67) Sterling.

In terms of Rule 41A of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) the Tribunal further determined to award interest on the sum at the rate of 4% per annum from the date of this decision until payment.

Background

- 1 This is an application under rule 111 of the Rules and section 71 of the Private Housing Tenancies (Scotland) Act 2016. The Applicant sought a payment order in respect of unpaid rent due under a private residential tenancy between the parties.
- 2 The application was referred to a case management discussion (“CMD”) to take place by teleconference on 18 June 2025. The Tribunal gave notice of the CMD to the parties in accordance with Rule 17(2) of the Rules. Said notice was

served upon the Respondent by sheriff officers on 2 April 2025. Both parties were invited to make written representations in advance of the CMD.

- 3 On 3 June 2025 the Tribunal received written representations from the Respondent. The Respondent advised that he was working with a money adviser to apply for sequestration. The debt would be included in the application and would be dealt with by the Respondent's appointed trustee.

The CMD

- 4 The CMD took place on 18 June 2025 at 10am by teleconference. Mr David Gray of Gilson Gray represented the Applicant. The Respondent did not join the call. The Tribunal had regard to the terms of the sheriff officers report confirming he had been given notice of the CMD, along with his written representations. The Tribunal was therefore satisfied that he was aware of the proceedings and determined to continue with the CMD in his absence.
- 5 The Tribunal had the following documents before it:-
 - (i) Form F application form and paper apart;
 - (ii) Title sheet MID97885 confirming the Applicant's ownership of the property;
 - (iii) Excerpt from the online landlord register confirming the Applicant's landlord registration;
 - (iv) Private residential tenancy agreement between the parties dated 1 February 2019;
 - (v) Rent statement and rent increase notices; and
 - (vi) The Respondent's written representations.
- 6 The Tribunal heard submissions from Mr Gray on the application. Mr Gray confirmed that he had seen the Respondent's written representations. Mr Gray had therefore checked the online registers prior to the CMD and no award of sequestration had been published in the Respondent's name. The Applicant was therefore seeking a payment order. Mr Gray advised that the arrears had increased to £9258.70, however in order to mitigate his legal costs the Applicant had not made any requests to increase the sum claimed in the application, which was £7924.67. The tenancy between the parties terminated on 4 May 2025.

Findings in fact

- 7 The Applicant and Respondent entered into a tenancy agreement in respect of the property, which commenced on 11 February 2019.
- 8 In terms of Clause 8 of the said tenancy agreement the Respondent agreed to pay rent of £750 per calendar month in advance.
- 9 The Respondent failed to pay rent as agreed. The Respondent has paid nothing to the rent account since 1 March 2024.

- 10 As at the date of submission of this application to the Tribunal rent arrears in the sum of £7,924.67 had accrued.
- 11 The arrears have since increased to £9258.70 as at the date of this decision.
- 12 The tenancy between the parties terminated on 4 May 2025.
- 13 The Respondent is due to pay the sum of £7924.67 to the Applicant under the terms of the said tenancy agreement.

Reasons for decision

- 14 The Tribunal was satisfied it had sufficient information before it to make relevant findings in fact and reach a decision on the application having regard to the application paperwork and the submissions heard at the CMD. In terms of Rule 17(4) and Rule 18(1) of the Rules the Tribunal determined that it could make a decision at the CMD as there were no issues to be resolved that would require a hearing and the Tribunal was satisfied that to make a decision would not be contrary to the interests of the parties.
- 15 Based on the application paperwork the Tribunal was satisfied that the Respondent had a contractual obligation to pay rent as reflected in the Tribunal's findings in fact and that he had failed to do so, resulting in arrears accruing in the sum of £7924.97. The Respondent had not sought to dispute this in his representations to the Tribunal.
- 16 The Tribunal considered the Respondent's written representations. The Tribunal was aware that the effect of sequestration is that a creditor is prohibited from carrying out any diligence in respect of a debt. However, the Respondent had not yet been sequestrated. The information he had provided suggests that he is simply in the process of submitting an application for sequestration. Mr Gray confirmed that no award of sequestration has been published in the Respondent's name, and the Respondent had given no further update as to his current status. The Tribunal did not therefore identify any barriers to making the order sought by the Applicant at this time.
- 17 The Tribunal therefore made an order for payment in the sum of £7924.67.
- 18 The Tribunal further determined to exercise its discretion under Rule 41A of the Rules to award interest at the rate of 4% per annum from the date of this decision until payment. The Tribunal considered this to be reasonable in the particular circumstances of this case having regard to the level of arrears and length of time they have been outstanding.

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

Legal Member/Chair

Date: 18 June 2025