



**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/20/2106**

**Re: Property at G/L 4, Morgan Street, Dundee, DD4 6LX (“the Property”)**

**Parties:**

**Mr Mark Westbrook, c/o Bank House, Stirling Street, Dundee, DD3 6PJ (“the Applicant”)**

**Mr Euan Kolber, G/L 4, Morgan Street, Dundee, DD4 6LX (“the Respondent”)**

**Tribunal Members:**

**Lesley Ward (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment by the respondent to the applicant of the sum of six thousand one hundred and forty three pounds (£6143) be made, with interest at the contractual rate of eight percent per annum (8%).**

## **Background**

1. This was a second case management discussion ‘CMD’ regarding an application to recover rent arrears in terms of rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, ‘the rules’ and s71 of the Private Housing (Tenancies) (Scotland) Act 2016, ‘the Act’. The application was initially sisted in November 2020 to enable the respondent to make payment towards the arrears. The applicant applied to recall the sist on 8 April 2021. A first CMD on 28 May 2021 was adjourned to enable the applicant to lodge an updated rent statement.
2. The applicant’s representative Mr Alec Campbell attended the CMD. The tribunal chamber wrote out to both parties on 2 June 2021 with the CMD note

with details of the adjourned CMD. notifying them of today's CMD. The tribunal had sight of the track and trace receipt which confirmed that the respondent signed for the letter on 3 June 2021. The tribunal was satisfied that the respondent had received appropriate notification in terms of rule 24. The tribunal proceeded with the CMD in his absence in terms of rule 29.

3. The tribunal had before it the following copy documents:

- (1) Application date 29 September 2020 and received by the tribunal on 2 October 2020.
- (2) PRT.
- (3) Rent statement.
- (4) Land certificate.
- (5) Letters sent by applicant's representative to the respondent dated 23 March 2021 and 8 April 2021.
- (6) Schedule of payment dates.
- (7) Up to date rent statement and email from applicant dated 28 May 2021.

## **Discussion**

4. Mr Campbell was seeking an order for £6143 as per his updated rent statement and covering email referred to at item 7 above. The rent arrears as at 28 May 2021 were £5443. As explained in the email, if no rent was paid on 1 June or 1 July 2021 this would increase the arrears to £6143. Mr Campbell confirmed that £6143 was now outstanding. He was also seeking contractual interest on 8% as set out in his application. He was also seeking legal costs incurred in making the application.

## **5. Findings in fact**

- The property is owned by Westbrook Enterprises (Scotland) Limited.
- The applicant is a director of Westbrook Enterprises (Scotland) Limited.
- Mr Douglas Westbrook, deceased, a former director of Westbrook Enterprises (Scotland) Limited entered into a tenancy agreement with the respondent for let of the property on 31 August 2019 with a start date of 1 September 2019.
- The applicant is the executor of Mr Douglas Westbrook.
- The agreed monthly rent was £350.
- The agreed rate of interest on any overdue rent was 8% per annum.
- Rent arrears began to accrue in October 2019.
- As at 1 July 2021 the sum of £6153 was outstanding.

## **Reasons**

6. This was an undefended application to recover rent arrears arising out of a private residential tenancy. The tribunal was satisfied that it had sufficient information before it to make a decision and the procedure had been fair. The

tribunal granted an order for the sum sought together with contractual interest of 8% as set out in clause 8 of the tenancy agreement. Mr Campbell was also seeking legal expenses although he had not lodged any vouching in relation to expenses sought. He stated that the respondent had not paid any rent and had not responded to any inquiries he had made to try to get in touch with him. The tribunal considered the terms of rule 40 which provides that the First-tier Tribunal may award expenses as taxed by the Auditor of the Court of Session where a party through unreasonable behaviour in the conduct of a case has put the other party to unnecessary expense. As the respondent had not entered any appearance in this application or attended any of the CMD's the tribunal was not satisfied that this test was met.

### **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.**

**16 July 2021**

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**Lesley A Ward Legal Member**

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**Date**