

Housing and Property Chamber
First-tier Tribunal for Scotland



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/18/2877

Re: Property at 23 Hazel Road, Grangemouth, FK3 8PL ("the Property")

Parties:

Mr Andrew Holleran, 15 Hazel Road, Grangemouth, FK3 8PL ("the Applicant")

Ms Ann-Marie McAlister, 23 Hazel Road, Grangemouth, FK3 8PL ("the Respondent")

Tribunal Members:

Lynsey MacDonald (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that

1. Background

- 1.1. The Applicant sought an order for payment in respect of rent arrears for the property. An application in terms of Rule 111 (Civil Proceedings in relation to a Private Residential Tenancy) was received by the Tribunal on 25th October 2018, and was accepted on 22nd February 2019. A separate application for in terms of Rule 109 (Eviction) was also received.
- 1.2. A Case Management Discussion was held on 11th April 2019. The Tribunal continued the Case Management Discussion in order allow the Applicant to consider his position in respect of two issues:
 - (1) Whether the method by which the rent was increased was lawful;
 - (2) What the amount sought was.

- 1.3. The continuation of the Case Management Discussion related only to the application for an order for payment: the Tribunal disposed of the application for an eviction order at the original Case Management Discussion.
- 1.4. A further Case Management Discussion was fixed for 17th June 2019, and was intimated to parties. The Respondent was informed that the Tribunal could do anything at the Case Management Discussion which it could do at a full Hearing, if the Tribunal had sufficient information and considered that the procedure had been fair.

2. The Continued Case Management Discussion

- 2.1. The Applicant did not attend the continued Case Management Discussion personally, but was again represented by Ms Julia Waiss, Solicitor.
- 2.2. The Respondent again failed to attend the continued Case Management Discussion, and was not represented. The Respondent had not been in contact with the Tribunal in advance of the continued Case Management Discussion.
- 2.3. The Applicant's solicitor lodged an updated rent statement, together with a certificate confirming that it had been served on the Respondent by Sheriff Officer. She asked the Tribunal to proceed in the absence of the Respondent, and to grant the order. The Tribunal was satisfied that the Respondent was aware of the Case Management Discussion, and that it was fair to proceed in her absence.
- 2.4. The Applicant's solicitor indicated that the sum sought was £5,461, as shown in the updated rent statement. Whilst making no concession with regard to the lawfulness or otherwise of agreeing to increase rent in the Tenancy Agreement, the amount sought reflected rent at the rate of £400 per month.
- 2.5. The Tribunal proceeded on the basis of the written documents which had previously been lodged, together with the updated rent statement.

3. Findings in Fact

- 3.1. The Applicant and the Respondent entered into a tenancy agreement commencing on 8th January 2018.
- 3.2. The rent payable was £400 per calendar month until 1st April 2018, at which time the rent increased to £450 per calendar month.

3.3. The Respondent made rent payments until April 2018, with only one partial payment thereafter in June 2018. No other rent payments were made by the Respondent.

3.4. On 31st May 2019 the amount of rent arrears was £5,061. On 1st June 2019 the amount of rent arrears was £5,461.

4. Reasons for Decision

4.1. There was nothing before the Tribunal challenging or disputing any of the evidence before it.

4.2. The Applicant having restricted the sum sought to £400 per calendar month, the Tribunal did not require to consider the lawfulness of agreeing a rent increase in the tenancy agreement.

4.3. The Tribunal accepted that the sum of £400 per calendar month was due from the Respondent to the Applicant under the terms of the lease, and that the Respondent is currently in rent arrears of £5,461.

4.4. The Respondent was served with an updated rent statement, showing rent arrears of £5,061, on 31st May 2019. This updated rent statement was served per the Tribunal's suggestion at the earlier Case Management Discussion, to give the Respondent the opportunity to consider it and, if desired, make representations in relation to it: she did not.

4.5. The application indicated that the order for payment was sought "for the amount of the current level of arrears". The Tribunal considered that the Respondent had fair notice that the Applicant was seeking an order for payment of all outstanding rent due. The Respondent was aware that a further payment in respect of rent was due on 1st June 2019. Accordingly the Tribunal was satisfied that it was fair to grant an order for the full sum sought.

5. Decision

An order for payment of the sum of £5,461, which reflects rent arrears calculated on the basis of rent payable at £400 per calendar month, is granted.

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.

Lynsey MacDonald
Legal Member

17/06/19
Date