



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for civil proceedings relative to a Private Residential Tenancy under rule Rule 70 of the Procedure Rules.

Chamber Ref: FTS/HPC/EV/18/2775

Re: Flat 42, 15 Ibroxholm Oval, Glasgow, G51 2TX ('the Property')

Parties:

Lowther Homes Limited, 25 Cochrane Street, Glasgow, G1 1HL ('the Applicants')

David Adams, Wheatley Housing Group Litigation Team, Wheatley House, 25 Cochrane Street, Glasgow, G1 1HL ('The Applicants' Representative')

Andrew Martin, Flat 42, 15 Ibroxholm Oval, Glasgow, G51 2TX ('the Respondent')

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('Tribunal')

Tribunal Member: Jacqui Taylor (Legal Member)

Decision

The Tribunal determined that an order for payment would be issued requiring the Respondent to pay the Applicant the sum of £5180.

Background

1. The Applicant submitted an application to the Tribunal for payment of arrears of rent in the sum of £3100 with interest at 8% per annum until payment.

2. Documents lodged with the Tribunal.

Documents lodged with the Tribunal by the Applicant with the application were:

2.1 A copy of the Tenancy Agreement.

2.2 A copy of a rent statement dated which showed that the outstanding rent as at 1st September 2018 to amount to £3100.

3. Case Management Discussion

This case had previously called for a Case Management Discussion (CMD) on 14th December 2018. The Tribunal identified that further information was required and issued a Direction requiring the Applicant to provide evidence of the rent increase referred to in clause 4.2 of tenancy agreement and also a detailed calculation of any interest claimed on the rent arrears in terms of clause 4.3 of the tenancy agreement. They adjourned the CMD to enable a response to the Direction to be provided.

4. The Applicants response to the Direction.

The Applicants lodged with the Tribunal the following documents as required by the Direction:-

4.1 A copy of their letter to the Respondent dated 1st February 2018 advising that the rent would be increased to £520 on 1st May 2018.

4.2 An interest calculation which showed that the total interest payable was £568.97 or £628.88.

The Tribunal administration sent the Respondent a copy of the said documents. No written representations were received from the Respondent in relation to them.

5. The Applicants' Application to Amend the Application.

5.1 On 3rd January 2019 the Applicants sent the Tribunal a letter requesting the Application to be amended in terms of Regulation 13 as follows:

'In the Form F Question 5(b) paper apart, order for payment delete the words after £3100 and insert last sentence 'The arrears of rent due up to 31st January 2019 being the Date of the Case Management Discussion will be £5180 which is the principal sum now claimed plus contractual interest at 2% above the base rate of the Royal Bank of Scotland calculated to 31st January 2019 being £628.88 and the Landlord is entitled to an order for payment.

In the Form F Question 5(c) delete £3100 with interest at 8% p.a. and substitute £5180 plus interest of £628.88 to 31st January 2019 and thereafter interest on £5180 at the rate of 2% above the base rate of the Royal Bank of Scotland from time to time from the date of the Tribunal Order until payment.'

5.2 The Tribunal administration sent the Respondent a copy of the said letter requesting the Application to be amended. No written representations were received from the Respondent in relation to the requested amendment.

6. Continued Case Management Discussion.

This case called for a continued Case Management Discussion (CMD) at 2pm at Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT on 31st January 2019.

The Applicants were not present but their representative Lisa Taylor, litigation solicitor of Lowther Homes Limited was present.

The Respondent was not present.

No written responses had been received from the Respondent.

The Respondent sent the Tribunal Administration an email on the morning of 31st January 2019 advising that he was unable to attend and that he did not wish to apply for a postponement.

7. The Tribunal identified with the Applicants' representative the following agreed facts:

7.1 The Applicants are the Landlords of the Property.

7.2 The Respondent was Tenant of the Property in terms of the Short Assured Tenancy between the parties.

7.3 The term of the Tenancy was from 9th November 2015 until 28th May 2016 and thereafter it continued on a monthly basis.

7.4 The rent due in terms of the tenancy was £500 per month. The Applicants sent the Respondent a letter dated 1st February 2018 advising that the rent would increase to £520 per month from 1st May 2018. A copy of the letter had been produced.

7.5. The Applicants' Representative made the following oral representations:-

7.5.1. The letter from the Applicants to the Respondent dated 1st February 2018 advising him of the increase in rent with effect from 1st May 2018 was not sent to the Respondent by recorded delivery post. However her clients never received details of the Respondent objecting to the increase. She also explained that the Respondent had received a copy of the application and had not lodged any written representations to the effect that he did not receive intimation of the increase in rent.

7.5.2 Lisa Taylor provided the Tribunal with an up to date rent statement dated 25th January 2019 which confirmed that the outstanding rent was £5180.

7.5.3 The chairperson queried the interest calculation provided by the Applicants as she suspected that it was incorrect. Lisa Taylor sought an adjournment to enable her to discuss the interest calculation with her clients. Thereafter she advised the Tribunal that the Applicants wished to amend the application to withdraw the interest claimed and accordingly they sought an order for payment to be made in the sum of £5180 in respect of the arrears of rent only.

8. Requirements of Section 70 of the Procedure Rules.

8.1 In connection with the requirements of section 70 the Tribunal determined that the application correctly detailed the requirements of section 70a(i), (ii) and (iii) of the Procedure Rules namely:-

- (i) the name and address of the Applicant.
- (ii) the name and address of the Respondent.
- (iii) the reason for making the application.

8.2 The Tribunal determined that the application had been accompanied by the documents specified in **Section 70(b)(i) and (ii) and (iii)** of the Procedure Rules being a copy of the lease and the statement of rent arrears.

9. Decision

9.1 The Tribunal allowed the Applicant's amendment to the Application as detailed in their letter to the Tribunal Administration dated 3rd January 2019 and the oral application to withdraw the claim for interest.

9.2 The Tribunal accepted as correct the evidence of the rent statement dated 25th January 2019 which showed the outstanding rent to be £5180. This sum corresponded with the figure detailed in the Applicants' application to amend their application dated 3rd January 2019, a copy of which had been provided to the Respondent.

9.3 The Tribunal determined that the outstanding rent due by the Respondent amounted to £5180 and accordingly they issued an Order for Payment in this sum.

10. 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.

J Taylor

..... Legal Member

31st January 2019