



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 70(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/19/0248

Re: Property at 31 Craighall Place, Blairgowrie, Perthshire, PH10 7AJ (“the Property”)

Parties:

Mr Walter Cruickshank, 14 Broomhill Drive, Muir of Ord, Highland, IV6 7WH (“the Applicant”)

Ms Mikala Harrison, 69 Springbank Road, Alyth, PH11 8BG (“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 against the Respondent in the sum of One thousand two hundred and two pounds and forty six pence (£1,202.46) Sterling with interest at the rate of eight per cent per annum until the date of payment

Background

- 1 By application dated 23rd January 2019 the Applicant sought an order for payment of outstanding rent arrears against the Respondent. In support of the application the Applicant submitted the following documents:-
 - a. Tenancy Agreement between the Applicant and Respondent together with Form AT5 and Tenancy Deposit Information;
 - b. Correspondence between the Applicant’s Agent (A&R Robertson and Black) and the Respondent;
 - c. Sheriff Officers Trace Report and Invoice;



d. Statement of Rent Account and Outstanding Costs

- 2 In response to a request for information from the Tribunal the Applicant clarified that the property had been sold to Perth and Kinross Council on 9th June 2017 and provided proof of his ownership of the property between November 2014 and June 2017.
- 3 By Notice of Acceptance of Application dated 13th May 2019, the Legal Member with delegated powers of the Chamber President intimated that there were no grounds for rejection of the application. A Case Management Discussion was therefore assigned for 24th June 2019.
- 4 A copy of the application paperwork together with notification of the Case Management Discussion was served on the Respondent by Sheriff Officers on 23rd May 2019.

The Case Management Discussion

- 5 The Case Management Discussion took place at the Inveralmond Business Centre. The Applicant was present. The Respondent did not attend.
- 6 The Applicant confirmed that he was seeking the sum of £1295.08. This consisted of rent arrears in the sum of £1,112.46, interest on that sum of 2% (£92.62) and a trace fee of £90.
- 7 The Tribunal noted that the tenancy agreement did not provide for interest to be claimed on unpaid rent however it could consider the question of interest from the date of the decision under Rule 41 of the Procedural Rules. The Applicant confirmed he would not be insisting on the £92.62 if he was unable to claim for interest under the terms of the Tenancy Agreement.

Findings in Fact and Law

- 8 The Applicant entered into a Tenancy Agreement with the Respondent dated 6th and 9th January 2016 in respect of the Property.
- 9 In terms of Clause 5 of the Tenancy Agreement the Respondents undertook to pay rent at the rate of £525 per month.



- 10 The tenancy between the parties was terminated on 15th November 2019. As at the date of termination rent arrears in the sum of £1,112.46 were outstanding.
- 11 The Respondent is liable for payment of the outstanding arrears and Sheriff Officers trace fee under the terms of the said Tenancy Agreement.
- 12 There is no contractual provision in the said Tenancy Agreement that would allow the Applicant to recover interest on the outstanding arrears at the rate of two per cent.

Reasons for Decision

- 13 Having considered the verbal and written representations from the Applicant the Tribunal was satisfied at the Case Management Discussion that it was able to make sufficient findings to determine the case without a hearing and that to do so would not be prejudicial to the interests of the parties. The Tribunal was satisfied that service of the application paperwork had been properly effected by Sheriff Officers and the Respondent was therefore aware or ought to be aware of the date, time and location of the Case Management Discussion. The Tribunal was therefore able to proceed with the Case Management Discussion in the absence of the Respondent.
- 14 The Tribunal accepted based on its findings in fact that the sum of £1,202.46 is lawfully due by the Respondent by virtue of the terms of the Tenancy Agreement between the parties and the documents produced by the Applicant, being rent unpaid by the Respondent which is lawfully due for the period 24 January 2016 to 24 October 2016 and the Sheriff Officers trace fee required as a result of the Respondent having failed to provide a forwarding address.
- 15 The Tribunal was not however satisfied that the Applicant had a basis upon which to recover the sum of £92.62 in respect of interest on the outstanding arrears. The provisions of the Tenancy Agreement between the parties did not permit the Applicant to recover these sums in relation to the pursuance of lost rent. Accordingly the Tribunal was unable to make any order for those costs.
- 16 However the Tribunal was aware that in terms of Rule 41 of the Procedural Rules, it could include interest on any sum awarded when making an order for payment which would run from the date of the decision. The Tribunal therefore



considered it would be proportionate having regard to the length of time the balance had been outstanding to apply interest at the rate of eight per cent per annum in line with the rate of interest awarded for Sheriff Court payment decrees.

- 17 The Tribunal therefore determined to make an order for payment in the sum of £1,202.46 together with interest at the rate of eight per cent per annum until payment.

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

24 June 2019

✓ _____
Legal Member/Chair

_____ Date