



Decision 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/22/2581

Re: Property at 13 Flat 2, Stobbie Place, Edinburgh, EH16 4YS (“the Property”)

Parties:

Edinburgh Living LLP, Waverly Court, 4 East Market Street, Edinburgh, EH8 8BG (“the Applicant”)

Mr Darren Walls, 13 Flat 2, Stobbie Place, Edinburgh, EH16 4YS (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to the Order sought for recovery of possession of the property.

Background

1. The Applicant submitted an application under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The Applicant sought an order for payment in respect of rent arrears said to have been incurred by the Respondent.
2. A case management discussion (“CMD”) took place on 3 November 2022. Reference is made to the Note and Notice of Direction issued following that CMD.
3. On 14 December 2022, the Tribunal received further documents from the Applicant’s representative in support of the application. Those documents included an update rent statement, rent increase notices and a copy of a letter regarding the Scottish Government’s Tenant Hardship Loan. These documents were accompanied by an application to amend the claim form. The Tribunal

issued a copy of the amendment application and documents to the Respondent on 15 December 2022.

The case management discussion

4. The CMD took place by conference call. The Applicant was represented by Mr Gordon. The Respondent did not join the conference call and the discussion proceeded in his absence. This case called alongside a related case which proceeds under chamber reference FTS/HPC/EV/22/2580. The Applicant's representative explained that he received an email from the Respondent on 5 February 2023 and he forwarded a copy of that email to the Tribunal members for consideration. The Applicant's representative advised that the email did not change the Applicant's position which is that an order for payment should be granted. The level of rent arrears brought out in the updated rent statement is £19,444. As at the date of the amendment application, the arrears had increased to £20,004 and as at 31 January 2023 the arrears increased to £20,564. The Applicant sought to increase the sum sued for to £20,004 which sum is reflected in the updated rent statement and moved for a payment order to be granted in that sum, together with interest at the rate of 8%. Although there was no contractual term providing for interest, the Applicant's representative relied upon rule 41A which gives the Tribunal discretion to award interest.

Findings in Fact

5. The parties entered into a private residential tenancy which commenced 20 December 2019.
6. The Respondent was obliged to pay rent, initially at the rate of £550 per month, in advance.
7. The rent due in terms of the tenancy agreement increased to £557 per month with effect from 1 January 2021.
8. The rent due in terms of the tenancy agreement increased to £560 per month with effect from 1 January 2022.
9. As at 14 December 2022, the Respondent was in arrears of rent of £20,004.

Reason for Decision

10. The Tribunal proceeded on the basis of the documents lodged and the submissions made at the CMD. The Respondent failed to participate in the discussion and did not lodge any written submissions. The updated rent statement lodged demonstrated that there are significant arrears of rent. There was nothing to indicate that the Respondent disputed the level of rent arrears shown on the updated rent statement. The Tribunal was satisfied that the sum

of £20,004 is due to the Applicant in respect of rent arrears. The amendment application had been intimated to the Respondent. The Tribunal therefore granted the application to amend the sum sued for and granted an order for payment in that sum.

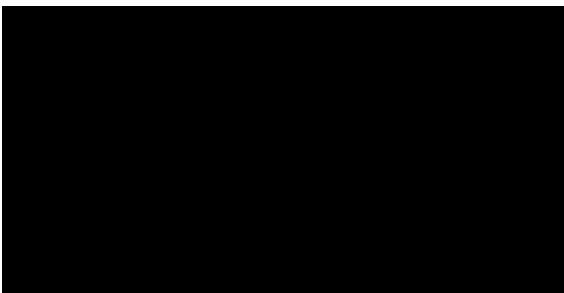
11. The Tribunal observed that the tenancy agreement made no provision for interest on late payment of rent. The Tribunal was not satisfied that it was reasonable to award interest on the sum due by the Respondent.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.



Legal Member/Chair

6 February 2023
Date