



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) Act 2016

Chamber Ref: FTS/HPC/CV/20/1653

Re: Property at 22 Greenlees Gardens, Cambuslang, Glasgow, G72 8QR (“the Property”)

Parties:

Mr George Mackay and Mrs Joanne Mackay, 6 Hawthorn Avenue, Cambuslang, Glasgow, G72 7AE (“the applicants”)

Mr Jason Drummond and Mrs Sandra Drummond, 51 Whitlawburn Terrace, Cambuslang, Glasgow, G72 8BZ; 31 Fennsbank Avenue, Rutherglen, G73 5LR (“the respondents”)

Tribunal Member:

David M Preston (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the Respondent in the sum of FOUR THOUSAND NINE HUNDRED AND FIFTY POUNDS £4950 with interest thereon from the date of the decision at the rate of 3% per annum until payment.

Background:

1. By application dated 4 August 2020 the applicants applied to the Tribunal for an order for payment on the grounds that the respondents had accrued rent arrears under a Private Residential Tenancy Agreement, The applicant provided the Tribunal with a copy of the tenancy agreement and a rent statement in support of the application.
2. By Notice of Acceptance dated 18 September 2020 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD along with a copy of the application and supporting documentation was served on the Respondents by Sheriff Officers on 29 September 2020.
4. The tribunal had before it: Application Form dated 4 August 2020; copy Private Printed Tenancy Agreement dated 28 November 2018; Rent Statement to 20 August 2020; correspondence between the applicants and the respondents; copy bank statements.

The CMD

5. On 28 October 2020 a hearing was convened by telephone in accordance with the provisions for dealing with business during the COVID-19 pandemic. Present by telephone at the CMD were the applicants. There was no attendance by or on behalf of the respondents. The Tribunal on being satisfied that the respondents had been given proper notice of the CMD by Sheriff Officers, determined in accordance with Rule 29 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016 ("the 2016 Rules") to consider the application in their absence.
6. The tribunal noted the terms of the Tenancy Agreement and confirmed the lease had commenced on 20 December 2018. The rent was £825 per month. The applicants confirmed the terms of the rent statement that rent had not been paid on 20 March, 20 April, 20 May, 20 June, 20 July and 20 August being a total of six months at the rate of £825 per month.
7. The tribunal noted that the application sought interest at the daily rate of 8%. Applicants said that this rate of interest provided for in the tenancy agreement but was unable to direct the tribunal to this provision. The tribunal was unable to locate the provision.
8. The tribunal explained that in the absence of an express provision in the tenancy agreement, interest could only be charged at a realistic rate which was currently considered to be 3% per annum to reflect the use of the funds.

Reasons for Decision

9. Rule 17 of the Regulations states that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision. The tribunal decided that, on the basis of the information before it, it was in a position to make a decision without further enquiry.
10. The tribunal was satisfied from the evidence provided in the written submissions and by the applicants at the CMD that the parties had entered into a Private Residential Tenancy Agreement at a rent of £825

per month. The tribunal was also satisfied that the respondent had failed to pay any rent since March 2020 and therefore by the date of the CMD there was 6 month's rent outstanding amounting to £4950.00 and the applicant was entitled to an order for payment of that amount.

13. Although the Tenancy Agreement made no provision for the payment of interest on rent arrears, the 2016 Rules made provision for the tribunal to make an award of interest on payment orders (Rule 41A). The applicant had sought interest in the application and in the circumstances the tribunal considered it reasonable that interest should run from the date of the decision until payment at the rate of 3% per annum.

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.

David Preston

28 October 2020