



**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/21/2981**

**Re: Property at 45/8 Westfield Avenue, Edinburgh, EH11 2TN (“the Property”)**

**Parties:**

**Lowther Homes Limited, 25 Cochrane Street, Glasgow, G1 1HL (“the applicants”)**

**Ms Lorna Sims, whose current whereabouts are presently unknown to the tribunal (“the respondent”)**

**Tribunal Members:**

**David Preston (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 to issue an Order for Payment in the sum of £7918.40 together with interest thereon at the rate of 4.1% per annum from the date of the Order until payment.**

1. Following the Case Management Discussion (CMD) on 23 March 2022, the tribunal issued a Note in terms of which the application was continued to a full hearing, at which the applicants were to present evidence of rent increase notices and details of steps taken by them to ascertain the respondent’s position before raising the application.
2. By email dated 3 May 2022 the applicants submitted a 2<sup>nd</sup> Inventory of Productions including at item 2 a letter notifying the increase in rent for the period 2021/2022 to the rate of £571 20 per month.
3. Intimation of the date of the full hearing was served on the respondent by advertisement conform to Certificate of Service by Advertisement dated 17 May 2022.

## Hearing

4. The hearing was convened by telephone on 17 May 2022 at 10:00 am. Mr David Adams, Solicitor attended on behalf of the applicants. There was no attendance by or on behalf of the respondent. The tribunal noted that the respondent had failed to attend or be represented at the CMD on 23 March 2022 and, it was satisfied that Notice of the Hearing had been duly served on her by Advertisement. Accordingly, the tribunal was content to proceed in her absence.
5. Mr Adams referred to the letter of intimation of the rent increase dated 27 January 2021 which was noted by the tribunal. He led evidence from Ms Michelle Rush, Commercial Services & Products Manager, Lowther Homes Ltd 25 Cochrane Street, Glasgow G1 1HL.
6. Ms Rush referred to the Summary of Correspondence with Respondent at item 7 of the applicants' Inventory of Attachments. She also referred to the Rent Statement which showed that the arrears had amounted to £3360 on 1 March 2021 resulting in service of a Notice to Quit by Sheriff Officers on 4 March 2021. She advised that thereafter efforts continued to be made to contact the respondent by telephone and letter as detailed in the Summary of Correspondence. The applicant had been unable to obtain any response from the respondent who continued to fail to respond to voice messages or engage in any way with the applicants. She advised that the applicants were unaware that the respondent had left the property as she had neither returned the keys nor given any indication that she had or was intending to leave the property.
7. On 18 January 2022 the applicants were contacted by a male asking for access to the property to recover his belongings. He advised that he was the respondent's former partner and he had discovered that she had left property without telling him and he wanted to recover his belongings. Shortly thereafter the applicants were advised by the tribunal that it had been unable to serve the application on the respondent as she had vacated the property some months previously. The applicants had no knowledge of the respondent's whereabouts. Ms Rush advised that the applicants had no reason to visit the property prior to discovering that it had been vacated. She advised that gas checks were carried out on a group system which had not required any visits or access to the property.
8. Following the applicants being made aware of the fact that the respondent had left the property, they followed the abandonment process and recovered the property on 20 February 2022. She advised that the applicants would expect to have been advised that the tenant was leaving the property and that the keys should have been returned to them.

## Submissions

9. Mr Adams referred the tribunal to Clause 24 of the Short Assurance Tenancy at item 1 of the applicants' Inventory which imposed a duty on the respondent to occupy the property and to inform the applicants if she was to be absent for any reason for a period of over one month. That clause also set out the procedure for the abandonment process. He submitted that the respondent had failed to comply

with both the duty to occupy the property and the duty to inform the applicants. Accordingly, she was liable to pay rent until the point at which the applicants had become aware that she had left property, namely January 2022, although they were only looking for arrears up to the date of the application on 26 November 2021 in the sum of £7918.40. They had not sought to amend the amount to cover the period until 20 February 2022. He submitted that the applicants had done everything that they reasonably could do to maintain contact with the respondent and attempt to ascertain her position.

10. In relation to the rate of interest sought, Mr Adams referred to the provisions of clause 8 of the tenancy agreement which provided for interest at 4% over Bank of Scotland Base Rate and also referred to the Notice from Bank of Scotland at item 4 of the applicants 2<sup>nd</sup> Inventory of Productions submitted on 3 May 2022.

### **Reasons for Decision**

11. The tribunal had due regard to the documentary evidence produced by the applicants and to the oral evidence from Ms Rush who the tribunal found to be a credible and reliable witness. In the absence of any contradictory evidence on behalf of the respondent, the tribunal accepted that the applicants had done what they reasonably could have done to maintain contact with the respondent both prior to and following on the service of the Notice to Quit.

12. The tribunal also accepted that the applicants were entitled to an Order for Payment in the sum of £7918.40 being arrears of rent up to the date of the application on 26 November 2021 together with contractual interest at the rate of 4.1% as sought and in terms of clause 8 of the tenancy agreement.

### **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.**

**D. P**

17 May 2022