

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) Scotland Act 2016

Chamber Ref: FTS/HPC/CV/18/2121

Re: Property at 5/1 Powderhall Rigg, Edinburgh, EH7 4GA (“the Property”)

Parties:

Mr Kenneth Anderson, 34 Castle Lawns, Sandyford, Dublin, Ireland (“the Applicant”)

Mr Nicholas Green, 5/1 Powderhall Rigg, Edinburgh, EH7 4GA (“the Respondent”)

Tribunal Members:

Alastair Houston (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of THREE THOUSAND TWO HUNDRED AND TWENTY FOUR POUNDS (£3224.00) STERLING be made in favour of the Applicant.

1. Background

1.1 This is an application under Rule 111 of the Chamber rules whereby the Applicant seeks an order for payment. The application is accompanied by, amongst other things, a copy of the written tenancy agreement between the parties, a copy of a notice to leave, a rent statement and an email advising of an amendment of the sum sought.

2. The Case Management Discussion

2.1 The Case Management Discussion took place in George House, Edinburgh on 22 November 2018. The Applicant was represented by Mr Duncan McDonald of Broughton Property Management, letting agents. The Respondent was neither present nor represented.

- 2.2 The Tribunal noted that the Respondent had emailed the casework team on the day of the Case Management Discussion requesting that the Case Management Discussion be changed to a later date to allow the Respondent to secure legal representation and submit evidence. The Tribunal further noted that no other representations had been received from the Respondent prior to the email.
- 2.3 Mr McDonald confirmed that the request for an adjournment of the Case Management Discussion was opposed. He submitted that the Respondent had been given notice of the Case Management Discussion and highlighted the execution of service by Sheriff Officers of the notification of the Case Management Discussion. In light of this, and in the absence of any further submission by the Respondent, the Tribunal considered that none of the requirements in Rule 28 relating to a request for an adjournment were satisfied and that it was appropriate to proceed in the absence of the Respondent.
- 2.4 Mr McDonald advised that no payment had been received from the Respondent in terms of rent for the months of August, September, October and November 2018. He referred to the email sent to the Tribunal dated 22 October 2018 which amended the sum sought. He confirmed that £3200.00 was sought in terms of unpaid rent, £44.89 was sought as interest accrued on the unpaid rent and £24.00 sought in terms of a charge invoiced to the Respondent in respect of a letter sent. The total sought was £3268.89.
- 2.5 The Tribunal noted that the written tenancy agreement, at paragraph 8, made provision for interest to be charged at 5% over base rate. Mr McDonald conceded that the base rate during the period over which arrears had accrued was likely 1.5%; hence the rate of interest applied was incorrect. He was prepared to drop this head of claim and only insisted on payment of £3224.00.

3. Reasons For Decision

- 3.1 The written tenancy agreement specifies a contractual monthly rent charge of £800.00. The Respondent had failed to make payment in terms of the agreement. As of the date of the Case Management Discussion, four months' rent was outstanding. The Applicant was therefore contractually entitled to payment of this.
- 3.2 Paragraph 37 of the written tenancy agreement sets out the fees the Applicant was entitled to charge in the event of a default by the Respondent. The Applicant was therefore contractually entitled to payment of the sum of £24.00 in respect of corresponding with the Respondent following the default in terms of payment of rent.

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.

Mr Alastair Houston

Legal Member/Chair

Date

22 NOVEMBER 2018