



Decision with Statement of Reasons 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/22/1580

Re: Property at Flat 3/3, 12 Earl Street, Scotstoun, Glasgow, G14 0AX (“the Property”)

Parties:

Mr Kashief Anwar, 57 Crosslees Drive, Thornliebank, Glasgow, G46 7DY (“the Applicant”)

Mr David Drummond, Flat 3/3, 12 Earl Street, Scotstoun, Glasgow, G14 0AY (“the Respondent”)

Tribunal Members:

Rory Cowan (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a Payment Order in the sum of £3,720 should be granted.

- Background

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By application dated 23 May 2022, the Applicant initially sought a payment order against the Respondent in the sum of £1,820.00 (the Application).

With the Application and in response to further information requests from tribunal administration, the Applicant has lodged various supporting documents including;

- 1) Copy Lease for the Property (unsigned); and
- 2) Copy rent statement.

Following acceptance of the Application, a Case Management Discussion (CMD) to be heard by way of conference call was fixed for 29 September 2022. The Applicant appeared and represented himself. The Respondent did not appear, nor was he

represented. The CMD was continued to allow the Applicant to amend the Application to reflect the current arrears and to provide an UpToDate rental statement. A further CMD was fixed to be heard by way of conference call on 1 November 2022. In advance of same, on behalf of the Applicant, an application to amend the sum sued for to £3,720.00 and to add a claim for contractual interest was intimated by email on 18 October 2022. With that was intimated an up to date rent statement showing the arrears as at 21 September 2022.

- The Case Management Discussion

The Applicant appeared along with his representative Ms Elaine Elder, solicitor. In addition, a trainee solicitor Ms Karolina Naglik attended with Ms Elder but took no part on the proceedings. The Respondent did not appear, nor was he represented. Despite this, the Tribunal was satisfied that he was aware of the date of the CMD, that the matter could be dealt with in his absence if he did not attend and the procedure had been fair.

The Tribunal considered the terms of the “motion to amend” dated 18 October 2022. The amendment seeking to amend the sum sued for was discussed and the Tribunal agreed to grant same. An amendment of this kind is made in terms of Rule 14A of the Tribunal rules of procedure and the requirements of same had been complied with.

It was accepted by Ms Elder that no previous mention of a claim for contractual interest had been incorporated into the Application and it was therefore a new matter. In relation to the part of the “motion” seeking to add a claim for contractual interest, this can only be made in terms of Rule 14 of the Tribunal rules of procedure. Rule 14(2) states as follows:

*“(2) Where an application is amended to include a new issue, any other party must be given an opportunity to make written representations in response to the amendment, or request the opportunity to make oral representations, by a date specified by the First-tier Tribunal which is not less than 14 days from the date on which—
(a) intimation of the amendment is served; or
(b) the amendment was made orally during the hearing in accordance with rule 13(2)(a).”*

No such opportunity had been given to the Respondent to respond to the proposed amendment. As such, it was discussed with Ms Elder whether the Applicant was still insisting upon this amendment and, if so, it was explained that the CMD would require to be continued to allow a response. After discussing with the Applicant, Ms Elder confirmed that he was not insisting upon amendment in so far as it related to a claim for contractual interest and indicated that the Applicant was content to seek a Payment Order in the amended sum of £3,720.00.

- Findings in Fact and Law

- 1) The Applicant and Respondent entered into a tenancy agreement relative to the Property which commenced on 21 September 2021.

- 2) In terms of the tenancy agreement between the Applicant and the Respondent the rent payable was £475.00 per month.
 - 3) As at 21 September 2022, the Respondent was in rent arrears to the extent of £3,720.00.
 - 4) The Applicant is entitled to a Payment Order in the sum of £3,720.00.
- Reasons for Decision

The Respondent having failed to pay the rent due under the tenancy for the Property and having accrued arrears of rent up and until 21 September 2022 in the sum of £3,720.00, the Applicant is entitled to a Payment Order in that sum.

- Decision

A Payment Order in the sum of £3,720.00 should be issued in favour of the Applicant against the Respondent. The decision was unanimous.

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.

R Cowan

Legal Member/Chair

Date 1 November 2022