



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/CV/21/0714

Re: Property at 1 Loch Fyne Way, Whitburn, West Lothian, EH47 0RX (“the Property”)

Parties:

Mr Mark McKenzie, C/O Letting Solutions, 6 Bloom Farm Main Street, Livingstone Village, West Lothian, EH54 7AF (“the Applicant”)

Mr Michael John Patrick Cairns, 1 Loch Fyne Way, Whitburn, West Lothian, EH47 0RX (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment by the Respondent of the sum of £2,444.56 should be made in favour of the Applicant

Background

1. By application dated 22 March 2021, the Applicant sought a payment order in the sum of £1,844.56 against the Respondent in respect of rent arrears accrued in respect of the Property, plus interest thereon at the rate of 5% per annum, all in terms of Rule 70 of the Regulations. Supporting documentation, including a copy of the PRS Tenancy Agreement, was submitted in respect of the application.
2. A Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations on 30 March 2021. Details in respect of the application and the Case Management Discussion (“CMD”) fixed were served on the Respondent

by Sheriff Officer on 9 April 2021. The last date for written representations by the Respondent was 28 April 2021. No written representations were lodged by the Respondent.

3. On 4 May 2021, the Applicant's representative emailed the Tribunal attaching supplementary submissions on behalf of the Applicant and an updated rent statement. The Applicant wished to amend the sum claimed to the increased sum of £2,444.56 (plus interest).

Case Management Discussion

4. The CMD took place by telephone conference call on 10 May 2021 at 2pm. Mr Adam Gardiner, Senior Solicitor, of Lindsays attended as the Applicant's representative, as did Mr Curtis Preston, Trainee Solicitor, in the capacity of observer only. The Respondent, Mr Cairns, was also in attendance.
5. After introductions remarks by the Legal Member, the Applicant's representative was asked to address the application. Mr Gardiner confirmed that, in terms of the PRS Tenancy Agreement dated 14 August 2021, the monthly rental is £600. Rent arrears amounted to £1,844.56 when the Tribunal application was made and have increased since to £2,444.56 which is the sum now sought, plus interest at the rate of 5%. The Applicant wished to amend the sum sought today.
6. Mr Cairns was asked to confirm his position in relation to the debt. He confirmed that he agrees with the figures put forward by the Applicant and that the increased amount stated is due. He explained his position in relation to the debt. He advised that he underwent an operation in December 2020 and was signed off work for 6 weeks. He has since been suffering from anxiety and depression and has been unable to return to work. He is in receipt of Universal Credit and agreed with the DWP that the sum of £300 per month should be paid directly to the Applicant towards his rent costs and this has been happening. Unfortunately, Universal Credit will not pay out the full monthly rental that Mr Cairns is due to pay of £600 and he cannot afford to pay anything more than the £300. He appreciates that this impacts on his landlord, the Applicant, and has tried to get alternative accommodation through the Council. However, they say that he cannot be re-housed until he is evicted so he currently has nowhere else to go. Nor is he able to say when he will be able to go back to work. The Legal Member asked Mr Gardiner about the position. He confirmed, with reference to the rent statement, what Mr Cairns had said regarding the Universal Credit payments being made. He also confirmed that eviction proceedings may well follow but, at the moment, there are long notice periods applying to the Notices to Leave so eviction proceedings cannot yet be lodged with the Tribunal.
7. Mr Cairns was asked by the Legal Member whether he was wishing to request time to pay the arrears by way of instalments or whether he would prefer an order just to be made today. Mr Cairns indicated that he was not in a position to offer payment and would just like to move things forward as quickly as

possible so that the situation can be sorted out. Mr Gardiner confirmed he was looking for an order for the full sum today.

8. As regards the interest sought, Mr Gardiner was asked to justify the rate of 5% sought, given the current Bank of England base rate being just 0.1%. Mr Gardiner stated that he considered 5% to be the current commercial rate and the rate regularly granted by the Tribunal. The Legal Member indicated that she felt this was slightly high, given the current short term lending rates available, and would instead award interest at the rate of 4%.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of Private Rented Sector Tenancy which commenced on 14 August 2020 and is continuing.
3. The rent in terms of the tenancy is £600 per calendar month.
4. Rent arrears have accrued as a result of a change in the Respondent's financial position.
5. The Respondent is in receipt of Universal Credit and the sum of £300 per month is currently paid towards the rental payments due.
6. The amount currently due and resting owing by the Respondent is £2,444.56.
7. Time to pay is not being sought by the Respondent.

Reasons for Decision

1. The Legal Member was satisfied from the information contained in the application and supporting documentation, together with the oral submissions made on behalf of both parties at the CMD that the increased sum of £2,444.56 in unpaid rent is due and resting owing by the Respondent.
2. There being no contradictory information put forward by the Respondent and no time to pay sought, the Legal Member concluded that the matters did not require to go to an evidential hearing and that an order for payment in that sum, together with an award of interest thereon at the rate of 4% per annum, could properly be made at the CMD.

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.

Nicola Weir

Legal Member/Chair

10 May 2021
Date