



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/22/0130

Re: Property at 25 (G/2) Union Place, Dundee, DD2 1AB (“the Property”)

Parties:

West End Property Holdings Limited, 10 Douglas Street, Dundee, DD1 5AJ (“the Applicant”)

Lauren Ann Hulme, Mr Jamie Thomas O'Rourke, both formerly residing at 25 (G/2) Union Place, Dundee, DD2 1AB, and whose current whereabouts are unknown (“the Respondents”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

This was an application for a payment order dated 14th January 2022 and brought in terms of Rule 111 (Application for civil proceedings in relation to a private residential tenancy) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant sought in its application payment of arrears in rental payments of £4,494.00 in relation to the Property from the Respondents with interest thereon from the date of the Tribunal's decision, and provided with its application copies of the private residential tenancy agreement and rent arrears statement.

The private residential tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*, and

the procedures set out in that Act appeared to have been correctly followed and applied.

Service was validly effected by advertisement in terms of Rule 6A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, and the Tribunal was provided with confirmation of service by advertisement.

By e-mail to the Tribunal of 5th May 2022, the Applicant requested to amend the sum sought in its application in terms of Rule 14A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended to the figure of £5,950.00, and provided further vouching in support of that figure.

Case Management Discussion

A Case Management Discussion was held at 10:00 on 19th May 2022 by Tele-Conference. The Applicant did not participate, but was represented by Mr Runciman, solicitor. The Respondents did not participate, nor were they represented.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Tribunal was invited by Mr Runciman with reference to the application and papers to grant an order for payment of the sum of £5,950.00. That figure was comprised of rent arrears of £6,219.00, from which the Applicant had deducted the deposit of £575.00 which it had retained. To the resulting figure of £5,664.00, the Applicant had added the figure of £306.00 in respect of its legal costs in obtaining an order for payment from the Tribunal.

In terms of Clause 37 of the private residential tenancy agreement, the Applicant was entitled to recover its reasonable costs incurred as a result of the tenant's failure to pay rent. Mr Runciman submitted that the figure of £306.00 was reasonable.

Finally, in terms of Clause 37 of the private residential tenancy agreement, the Applicant was entitled to charge interest at the rate of 2.5% over Bank of England Base Rate on overdue rent from the date when it was due.

Statement of Reasons

The jurisdiction of the Tribunal in relation to Private Residential Tenancies, such as that which applied to the Property, is set by statute. Section 71(1) of the *Private Housing (Tenancies) (Scotland) Act 2016* provides:

“First-tier Tribunal's jurisdiction

(1) In relation to civil proceedings arising from a private residential tenancy—

- (a) the First-tier Tribunal has whatever competence and jurisdiction a sheriff would have but for paragraph (b),
 - (b) a sheriff does not have competence or jurisdiction.
- (2) For the purposes of subsection (1), civil proceedings are any proceedings other than—
- (a) the prosecution of a criminal offence,
 - (b) any proceedings related to such a prosecution.”

The Tribunal accordingly has jurisdiction to hear civil proceedings arising from a private residential tenancy such as between the parties in this application.

The Tribunal considered the terms of the private residential tenancy agreement, the rent arrears information provided, and the submissions made by Mr Runciman, and was satisfied that these disclosed an outstanding balance of rent arrears and reasonable costs after deduction of the tenancy deposit retained totalling £5,950.00. Rent of £575.00 per month was due in terms of Clause 8 of the tenancy agreement.

The Applicant also sought interest in terms of clause 37 of the tenancy agreement on that amount at the rate of 2.5% over Bank of England Base Rate in terms of Rule 41A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

In terms of that rule, the Tribunal may include interest from the date of its decision at the rate stated in the tenancy agreement. Accordingly, the Tribunal made an order for payment of that sum with interest.

Decision

In these circumstances, the Tribunal made an order for payment by the Respondents jointly and severally to the Applicant of the sum of £5,950.00 with interest thereon at the rate of 2.5% over Bank of England Base Rate from the date of the decision of the Tribunal until payment.

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.

N. K

19/05/2022

Legal Member/Chair

Date