



**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/22/0412**

**Re: Property at 100E High Street, Lochee, Dundee, DD2 3AY (“the Property”)**

**Parties:**

**Blinshall Street Ltd, Digital It Centre, 10 Douglas Street, Dundee, DD1 5AJ (“the Applicant”)**

**Mr Jack Shillitto, 100E High Street, Lochee, Dundee, DD2 3AY (“the Respondent”)**

**Tribunal Members:**

**Melanie Barbour (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it should make an order for payment for the sum of TWO THOUSAND ONE HUNDRED AND EIGHTY FIVE POUNDS (£2,185.00) STERLING together with interest at the rate of 3% per annum from the date of the Order until payment**

**Background**

1. An application was made to 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 2017 Rules”) seeking an order for payment for £1470 to the Applicant in relation to rent arrears and reasonable costs together with interest at 3%.
2. The application contained:-

- a copy of the tenancy agreement, and
  - rental statement
3. On 15 April 2022 the applicant submitted papers moving to amend the sum sued to £2185, this sum to include further rent arrears and reasonable costs totalling £300. The applicant's agents enclosed email confirmation of service of these papers on the respondent. There was also an updated rent statement and an invoice for professional fees attached.
  4. The Applicant's representative, Ms Bell of Gilson Gray LLP appeared on behalf of the Applicant. There was no appearance by the Respondent. Notice of the case management discussion had been served on the Respondent by sheriff officers on 15 March 2022. As I was satisfied that there had been service of the application on the Respondent I was prepared to proceed with today's hearing in his absence.

#### Discussion

5. I noted the papers lodged in support of the application, including the tenancy agreement, rent account statement and motion to amend the sum sued. This application related to unpaid rent and costs incurred in seeking to recover the rent.
6. The Applicant's representative moved the motion to amend the sum sued. I granted this motion.
7. The Applicant's representative advised me that that the Respondent was aware of the rent arrears. The Applicant had made attempts to get him to pay the rent arrears but those attempts had been unsuccessful. There had been no engagement by the Respondent. The last payment received from the Respondent was 2 March 2022 as set out in the most rent statement submitted by the Applicant. The current rent arrears total £1885.

8. The Applicant's representative referred to clause 37 of the tenancy agreement which allowed the landlord to seek charges for pursuing rent. In terms of seeking interest she referred me to clause 37.3 which allows interest to be charged where rent is overdue.

#### Findings in Fact

9. The Tribunal found the following facts to be established:
  - a. A tenancy agreement was entered into between the Applicant and the Respondent for the property and had existed between the parties
  - b. The Applicant was the heritable proprietor of the property.
  - c. The tenancy commenced on 30 October 2020.
  - d. Clause 8 in the tenancy agreement provided that monthly rent was £415. Rent was due on the 1<sup>st</sup> of each month and it was to be paid in advance.
  - e. The rental statement showed amounts due each month, amounts received, and rent outstanding.
  - f. The rental statement showed total rent arrears outstanding as of 1 April 2022 totalling £1,885.00.
  - g. It appeared that there had been no payments towards the rent arrears other than those shown on the rent statement.
  - h. Clause 37 of the tenancy agreement provides that the landlord will be entitled to pursue the tenant for any reasonable costs incurred as a result of the tenant's failure to pay rent or in pursuing the tenant for payment of unpaid rent.

- i. There was an invoice for professional fees for drafting Form F application for payment and appearing at the tribunal amounting to £306.00.
- j. Clause 37.3 provides that if rent is 10 days overdue then the landlord is entitled to charge interest from the day it was due until it is paid at a rate of 2.5% over Bank of England Base Rate.

### Reasons for Decision

10. Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 provides that the First Tier Tribunal has jurisdiction in relation to civil proceedings arising from private residential tenancies. As this tenancy is a private residential tenancy I am content that I have jurisdiction to deal with this case.
11. There was no response or appearance from the Respondent.
12. The tenancy agreement created obligations between the parties, which included paying rent and paying the landlord's reasonable charges and the right to impose interest. The Respondent had failed to pay his rent. There was submitted a rental statement showing the arrears due. The Applicant's representative submitted that the Respondent was in breach of the condition of the tenancy agreement regarding payment of rent. There was evidence in support of the claim. There is provision in the tenancy agreement for charges to be paid by the tenant where the landlord has incurred reasonable costs in pursuing the tenant for unpaid rent. There was evidence to support the claim for reasonable costs and oral evidence that the Applicant had tried to recover the rent arrears by trying to engage with the Respondent before proceeding to make this application. The invoice submitted was for costs incurred for professional fees to make the application. Those costs did not appear to be unreasonable. Rule 41A of the tribunal rules 2017 provide that the tribunal may award interest when making an order for payment where the rate is set out in the tenancy agreement or if ordered by the tribunal. There is reference to the landlord being entitled to impose interest for unpaid rent in the tenancy

agreement at clause 37.3. I am also prepared to award interest at a rate of 3% in respect of the reasonable costs element of this claim.

13. On the basis of the evidence submitted and having regard to all papers submitted including the application, I consider that I should make an order for the sum sued for an award interest at a rate of 3%.

### Decision

14. I grant an order in favour of the Applicant for TWO THOUSAND NOE HUNDRED AND EIGHTY FIVE POUNDS (£2,185.00) STERLING against the Respondent.

### **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.**

# M Barbour

04 May 2022

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**Legal Member/Chair**

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**Date**