



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/22/1089

Re: Property at 19 Townhead, Dalmellington, Ayr, KA6 7QZ (“the Property”)

Parties:

Ms Cristie Boland, 31 Bank Glen, New Cumnock, KA18 4QG (“the Applicant”)

Ms Lucy Riches, 8 Church Hill, Dalmellington KA6 7QP (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and Ahsan Khan (Ordinary Member)

The Tribunal granted the Application to the extent of making a Payment Order against the Respondent in the sum of £4,200.00.

Background

The Applicant seeks a Payment Order for £4,536.00 against the Respondent for rent arrears said to have been accrued by the Respondent under a tenancy between the parties. This sum is calculated on the basis of there being rent arrears in the sum of £4,200.00 and an additional sum of £336.00 due by virtue of Condition 10 of the tenancy which is in the following terms: *“The Tenant will be charged an additional 8 % of the Rent for any late payment of the Rent.”*

The Case Management Discussion

The Application called for a Case Management Discussion (CMD) at 10 am by conference call on 31 October 2022. The Application called alongside a related Application in respect of an Eviction Order between the parties. The Applicant was represented by Ms Barlow of D.W Shaw Solicitors. There was no appearance by or on

behalf of the Respondent. On the basis that the Application and information about how to join the conference call had been competently served on the Respondent at 8 Church Hill, Dalmellington KA6 7QP where she was now believed to be residing, the Tribunal decided to proceed in the absence of the Respondent. The Tribunal amended the Respondent's address to her new address.

Having heard from Ms Barlow and having considered the Application, the Tribunal made the following findings in fact.

Findings in Fact

- I. *The parties entered into a tenancy agreement which commenced on 1 September 2018;*
- II. *The Applicant was the landlord and the Respondent was the tenant;*
- III. *The contractual monthly rent due was the sum of £700.00;*
- IV. *On 22 September 2021, the Applicant served a Notice to Leave in terms of Ground 1 of Schedule 3 of the Act on the Respondent which informed them that the end of the notice period was 22 March 2022;*
- V. *After receiving this notice, the Respondent ceased making any further payments of rent;*
- VI. *The Respondent is thought to have vacated the Property in April 2022 and is believed to be living elsewhere at an address in Dalmellington;*
- VII. *The sum of £4,200.00 is lawfully due as rent by the Respondent to the Applicant but remains unpaid;*
- VIII. *The additional sum of £336.00 claimed under Condition 10 of the tenancy agreement constitutes a penalty clause which is legally unenforceable. It is punitive and in no way linked to any actual losses incurred by the Applicant. As such this head of claim must be refused;*

Reasons for Decision

Accordingly, the Tribunal granted the Application and made a Payment Order in favour of the Applicant against the Respondent in the sum of £4,200.00.

The Tribunal offered Ms Barlow the opportunity to seek a continuation of the CMD in the event that she wished to address the Tribunal on the issue of the penalty clause. The Tribunal indicated it would be open minded to hearing any such further submissions. Ms Barlow confirmed that her instructions were to conclude matters today if possible and did not seek any such continuation. Accordingly, the Tribunal made its final decision.

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.

A. McLaughlin

31 October 2022

Legal Member/Chair

Date