



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/22/1559

Re: Property at 10 Cross Street, Carmyle, Glasgow, G32 8JS (“the Property”)

Parties:

Miss Jane McGivern, 5 Toronto Walk, Glasgow, G32 8HA (“the Applicant”)

Miss Gemma Clark, Mr Joseph Jones, 10 Cross Street, Carmyle, Glasgow, G32 8JS (“the Respondents”)

Tribunal Members:

Nairn Young (Legal Member) and Ann Moore (Ordinary Member)

Decision

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

- Background

This is an application for an order for payment of rent arrears alleged to be owed by the Respondents to the Applicant in terms of their private residential tenancy at the Property. It called for hearing at 10am on 15 November 2022, by teleconference. The Applicant was on the call and was represented by Mr Coyle of Austin Lafferty, solicitors. The Respondents called in in-person.

- Findings in Fact

1. The Respondents rent the Property from the Applicant in terms of a private residential tenancy with a start date of 30 September 2019 (‘the PRT’).

2. In terms of the PRT, rent was originally payable at a rate of £480 per month, on or before the thirtieth day of each month.
3. The Respondents did not pay any of the rent falling due at the end of September, October, November or December 2019.
4. On 21 January, 28 February and 6 April 2020, the Respondent paid £417.50, £420 and £400 in rent, respectively.
5. With effect from 30 April 2020, the parties agreed a reduction in the rent due to £440 per month.
6. The Respondents have continued to pay £440 per month in rent since 30 April 2020.
7. On 1 March 2021, the Applicant hand-delivered to the Respondents a notice, identifying the Property and the Respondents as tenants, and further stating:

“This letter serves as a notice of rent increase for the tenancy at the above address.

The new weekly rental will be £150.00, payable every four weeks and will be payable from 01 June 2021.

If you are in receipt of Universal Credit and are paid money towards to your rent [sic.], you must notify the Department for Work and Pensions via your online journal on 01 June 2021 so that the necessary changes can be made to your Universal Credit account.

Please contact me if you have any questions.”

8. The PRT does not contain any provisions for interest to be charged on late rental payments.

9. The Respondents have not had access to the loft area above the Property since the commencement of the tenancy and have not raised this as an issue with the Applicant at any stage.

- Findings in Fact and Law

10. The Respondents owe the Applicant £2,122.50 in unpaid rent, for the period 30 September 2019 to 29 April 2020, inclusive.

11. The notice served by the Applicant on 1 March 2021 was not a valid rent-increase notice, in terms of s.22 of the Private Housing (Tenancies) (Scotland) Act 2016 ('the Act'), in that it fails to conform to the form prescribed in Schedule 2 of the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 ('the Regulations').

12. The difference between the notice as served and the form prescribed in the Regulations materially affects the effect of the notice.

13. The Respondents are not entitled to an abatement of rent on the basis that they have been unable to access the lift at the Property.

- Reasons for Decision

14. The relevant facts in this case were not ultimately in dispute between the parties, so the points for determination were principally in regard to the application of the law to those facts.

15. Firstly, the question of the amount owed turned on whether or not the notice served by the Applicant as a rent-increase notice was valid. Section 22(2) of the Act requires a rent increase notice to contain: "specify... the rent that will be payable once the increase takes effect, the day on which the increase is to

take effect, and fulfil any other requirements prescribed by the Scottish Ministers in regulations.”

16. The Regulations were passed under this section and set out at Schedule 2 the form that must be used for a rent-increase notice. Among other things, this form contains detailed information about advice and support services that may be accessed by a tenant receiving such a notice, a list of possible actions the tenant may wish to take in response, and a form of response that facilitates taking these actions.
17. The notice served by the Applicant in this case did not conform to the requirements of the Regulations. The Tribunal did consider whether s.21 of the Interpretation and Legislative Reform (Scotland) Act 2010 might have operated to prevent this divergence from rendering the notice invalid: but concluded that it did not. That section only applies where the difference does not materially affect the effect of the form. The Tribunal considered that part of the effect of the statutory form was to leave the tenants properly notified of the possible responses they may make to the notice, and some support and advice that might be available; and to facilitate a response by providing a proforma for them to use. The failure to include information to those ends therefore materially affected the effect of the notice.
18. Secondly, the Respondents suggested that they may be entitled to an abatement of rent as a result of their not having had access to a loft area above the Property. It was not suggested that this failure had rendered the Property uninhabitable and the matter had admittedly not been raised with Applicant by the Respondents during the now three years of the tenancy. Taking these points into account, and recognising that the remedy of an abatement of rent is an equitable one, the Tribunal did not consider that there was any basis to abate the rent.
19. The Tribunal was also requested by the Applicant to include interest in any order made. The tenancy agreement does not contain any provision for interest to be charged on outstanding rent. Against that background, the

Tribunal did not consider it would comply with the overriding objective to deal with the proceedings justly to determine that interest should be awarded at some other rate. It therefore declined to include interest in the order.

- Decision

Order made for payment by the Respondents to the Applicant of the sum of £2,122.50 (TWO THOUSAND, ONE HUNDRED AND TWENTY-TWO POUNDS AND FIFTY PENCE STERLING).

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 Young

Legal Member/Chair

— 15 November 2022

Date