



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/22/2337

Re: Property at 61 Charlotte Street, Aberdeen, AB25 1LU (“the Property”)

Parties:

Mr Dino Avagliano, Via Alessandro Cuzzi 1, 28925, Verbania, Italy, Italy (“the Applicant”)

Mr Craig Melvin, Miss Karen Quinn Freeman, Formerly residing at 61 Charlotte Street, Aberdeen, AB25 1LY, now whose present whereabouts are unknown (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order be granted against the Respondents for payment to the Applicant of the sum of Four Hundred and Fifty Pounds (£450)

Introduction

This is an application under rule 111 and section 71 of the Private Housing (Tenancies) (Scotland) Act 2016.

Service of the proceedings and intimation of the Case Management Discussion (CMD) was effected upon the respondents by way of service by advertisement in terms of Rule 6A. A Certificate confirming that the relevant Notice to the respondents was provided on the Chamber website has been produced disclosing intimation for the relevant period, which commenced on 30 August 2022.

The CMD took place by teleconference at 2.00 pm on 17 October 2022. The applicant was represented by Mr John M of Jackson Boyd Solicitors. The respondents failed to participate in the teleconference hearing.

Findings and reasons

The property is 61 Charlotte Street, Aberdeen AB25 1LU. The applicant is Mr Dino Avagliano. He is the heritable proprietor and registered landlord of the property. The respondents are Mr Craig Melvin and Miss Karen Quinn Freeman who are the former tenants.

The parties entered into a private residential tenancy which commenced on 30 September 2020. The monthly rent was £450 and a deposit was paid in the sum of £450.

The tenancy ended on 3 June 2022 when the respondents vacated the property. Throughout the duration of the tenancy, the respondents fell into arrears of the contractual rental payments.

There have been earlier proceedings between the parties in respect of rent arrears. In application referenced FTS/HPC/CV/22/0195 a Payment Order in the sum of £671.85 was made on 25 May 2022.

This application seeks an additional Payment Order in the sum of £450. This is because the rent schedule produced in the context of the previous proceedings contained an error and reflected what appeared to have been an additional month of rent which had not, in fact, been received. The current application is accompanied by a fresh up to date rent statement. This reflects total arrears of £1,571.85. After deduction of the previous Payment Order in the sum of £671.85 and the application of the deposit in the sum of £450 this leaves an additional £450 due by the respondents to the applicant in connection with arrears of rent.

The applicant is entitled to recover arrears of rent lawfully due under and in terms of the lease.

In the application the applicant also seeks interest at the rate of 8% per annum from the date of citation until payment. Such a request is equivalent to a crave for judicial interest which has no application to the First-tier Tribunal. The Administration of Justice (Scotland) Act 1972 section 4, as amended by the Act of Sederunt (Interest in Sheriff Court Decrees and Extracts) 1993 covers the payment of judicial interest in the Sheriff Court and these provisions have not been extended to the Tribunal. The payment of a judicial rate of 8% has no statutory basis. A rate in line with the use value of money and the loss actually suffered by the applicant, corresponding to the investment/borrowing rate can be justified. The borrowing rate for short-term commercial loans is approximately 4% per annum and that is an appropriate rate of interest to be imposed by the Tribunal.

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.

R Mill

17 October 2022

Legal Member/Chair

Date