



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/22/2777

Re: Property at 1 Corstorphine House Terrace, Corstorphine, Edinburgh, EH12 7AE (“the Property”)

Parties:

Mrs Elaine Bracher, 17 St Ninians Road, Edinburgh, EH12 8AP (“the Applicant”)

Nicola Valenti Maxwell, 1 Corstorphine House Terrace, Corstorphine, Edinburgh, EH12 7AE (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the Respondent to the Applicant in the sum of (1) £13805.75 with interest at the rate of 3% per annum from the date of the decision until payment and (2) £463.97.

Background

1. By application dated 9 August 2022 the Applicant’s representatives, Gilson Gray LLP, Solicitors, applied to the Tribunal for an order for payment in respect of alleged rent arrears arising from the Respondent’s tenancy of the property. The Applicant’s representatives submitted a copy of the tenancy agreement together with a rent statement in support of the application.
2. By Notice of Acceptance dated 14 October 2022 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 19 December 2022.
4. The Respondent submitted written representations by email on 16 January 2023.
5. A CMD was held by teleconference on 16 January 2023. The Applicant did not attend but was represented by Mr Gray from the Applicant's representatives. The Respondent did not attend. From the Respondent's written representations it appeared that she was in hospital and unable to attend the CMD. It also appeared there was a prospect of the arrears being paid. The Applicant's representative wished the application to be continued to remain conjoined with the eviction application Reference FTS/HPC/EV/22/3375 in order that the sum claimed could be amended. The Tribunal adjourned the CMD to a hearing and issued Directions to the Respondent to produce confirmation from the hospital or her GP of her stay in hospital and also full details of her proposed defence and circumstances by 28 February 2023.
6. By email dated 8 March 2023 the Applicant's representatives sought to amend the sum claimed to £13805.75 together with interest and additional sums amounting to £1435.97.

The Hearing

7. A hearing was held by teleconference on 29 March 2023. The Applicant did not attend but was again represented by Mr Gray. The Respondent did not attend nor was she represented. The Tribunal being satisfied that proper intimation of the hearing had been given to the Respondent determined to proceed in her absence.
8. Mr Gray confirmed that the Respondent remained in occupation of the property. He also confirmed that no rent had been paid and that the sum due was £13805.75 as shown on the rent statement submitted on 8 March. Mr Gray said that he had received a phone call on 21 March 2023 from Karen Stevenson from the Tenant Support Fund requesting a copy of the tenancy agreement but had heard nothing further and had been told in any event that any award would not be anywhere near the outstanding debt.
9. Mr Gray confirmed the tenancy agreement provided for the award of interest on any outstanding debt and submitted that interest of 3% - 4% was reasonable.
10. Mr Gray went on to say that the tenancy agreement created a contractual obligation for the Respondent to meet the Applicant's entire costs incurred in raising the application. The Tribunal referred Mr Gray to the terms of Clause

8 of the tenancy agreement and queried if that included judicial expenses. Mr Gray submitted it was a contractual obligation not a statutory one. He also submitted that by failing to comply with the Tribunal's Directions the Respondent had incurred the Applicant in unnecessary expense and that an award of expenses would be justified.

Findings in Fact

11. The parties entered into a Private Residential Tenancy agreement that commenced on 13 May 2022 at a rent of £1450.00 per calendar month.
12. The Respondent has incurred rent arrears amounting to £13805.75 as at 1 March 2023.
13. The tenancy agreement provides for the payment of interest on late payments of rent.
14. The tenancy agreement provides that the tenant shall be liable for further reasonable costs incurred by the landlord through the tenant's failure to pay rent.
15. The Applicant incurred legal costs prior to the raising of the application amounting to £463.97.

Reasons for Decision

16. The Tribunal was satisfied from the written representations and documents together with the oral submissions that the parties entered into a Private Residential Tenancy that commenced on 13 May 2022 at a rent of £1450.00 per calendar month. The Tribunal was also satisfied that the Respondent has failed to pay rent and has accumulated a debt of £13805.75. The tenancy agreement provides that interest on any outstanding rent can be charged at a rate of 8% per annum however in terms of Rule 41A of the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules") the Tribunal may make an order at a rate determined by it. In this instance and as indicated by Mr Gray the Tribunal considers that 3% per annum is a reasonable rate to apply in the circumstances and would reflect current bank deposit returns.
17. The Tribunal took account of the contractual obligations in Clause 8 of the Tenancy agreement and accepted that it was reasonable for the Applicant to be awarded a further sum in respect of the legal costs incurred prior to raising these proceedings. However, the Tribunal was not satisfied that it would be reasonable to allow further additional sums that would effectively be awards of expenses by another means and therefore refused the Applicants claims for payment of her representatives invoices 65530 dated 30 November 2022

for £306.00 and 65737 dated 31 January 2023 for £666.00. The Tribunal also considered whether it would be appropriate to make an award of expenses against the Respondent given her failure to attend the hearing and her failure to comply with the Tribunal's Directions. Having carefully considered matters and given that as a result of the matter being continued to the hearing the Applicant was able to amend the application to increase the sum claimed from that due at the date of the application the Tribunal determined that it would not be appropriate to award expenses against the Respondent.

Decision

18. Having carefully considered the written representations and documents together with the oral submissions the Tribunal finds the Applicant entitled to an order for payment by the Respondent in the sum of (1) £13805.75 with interest thereon at the rate of 3% per annum from the date of the decision until payment and (2) £463.97.

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.

**Graham Harding
Legal Member/Chair**

**29 March 2023
Date**