



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/23/0552

Re: Property at Flat 1 9 Pringle Drive, Little France, Edinburgh, EH16 4XB (“the Property”)

Parties:

Mrs Denise Lyall, 97 Clermiston Road, Edinburgh, EH12 6UU (“the Applicant”)

Mr Robert Kesson, Flat 1 9 Pringle Drive, Little France, Edinburgh, EH16 4XB (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £7,820 be granted in favour of the Applicant from the Respondent.

- **Background**

1. This was the first case management discussion (CMD) in respect of an application by the Applicant dated 21st February 2023 for an order for payment of arrears of rent from the Respondent who is the Tenant in a Tenancy of the Property from the Applicant.

The following documents were lodged with the application:-

- A copy of a Tenancy Agreement dated 13th April 2021 between the Applicant as Landlord and the Respondent who was the Tenant.
- Statement of rent arrears showing a sum outstanding as at of 2nd February 2023 of £4,940.

- Rent increase notice dated 5th April 2022 proposing an increase from £700 to £720 per month.
- 2. The Applicant's solicitor Mr John McKeown of Jackson Boyd Solicitors submitted a further email on 5th June 2023 to the Tribunal administration submitting a further Form F application showing an increase in the sum sought to £8,540 and also enclosing a fresh notice to leave which was dated 17th May 2023 and showed the Applicant was seeking to rely on Ground 12 A in the conjoined action for rent arrears, with a revised schedule of rent arrears showing rent of £7820 due up to and including 1st May 2023. A copy email addressed to the Respondent and sending the notice to leave and revised rent statement was also lodged dated 17th May 2023.
- 3. The case management discussion (CMD) proceeded today by way of teleconference. Service was validly affected on the Respondent by Service by Sheriff Officers who served the papers on the Respondent on 18th May 2023.

- **The Case Management Discussion**

1. The CMD took place by teleconferencing and the Tribunal waited until 14.10 to see if the Respondent was going to join the call. The Respondent did not join and was not represented at the CMD. The Respondent has not lodged any written submissions for the Tribunal to consider. Mr McKeown attended on behalf of the applicant and had lodged just prior to the CMD an email from the Respondent sent to the letting agent at 5.24pm on 19th June 2023 which stated "The flat will be empty for around 3pm tomorrow."
2. The legal member made introductions and explained the purpose and order of proceedings also advising that the Tribunal could make a decision after a CMD which it could after a hearing if satisfied it was appropriate to do so. The legal member indicated that the Tribunal considered it appropriate to continue with the CMD given that intimation had been given to the Respondent and he has not responded in writing to the Tribunal or requested any postponement of today's CMD.
3. Mr McKeown advised that he was instructed to seek an order for payment of £8,540 being the revised sum due and intimated to the Tribunal by his email of 5th June along with the revised rent statement showing nothing further had been paid since the application was raised and this meant the rent due as of 1st June 2023 was £8,540. Mr McKeown also indicated that, although the tenant had advised the letting agent by phone call the day before namely on 19th June, that he intended to leave and had followed that up in writing with the email just submitted today, Mr McKeown was not aware as the letting agents had heard nothing further if he had left or not.
4. The Tribunal enquired as to whether the revised Form F with the new sum sought had indeed been copied to the Respondent as indicated in Mr McKeown's email but he advised it had not been and so the Tribunal indicated it appeared that less than 14 days notice had been given to the Respondent of the intention to increase the sum claimed. Mr McKeown agreed that that was the case and submitted that more than 14 days

notice had been given of the sum due at 1st May which was £7,820 and the sum mentioned in the revised notice to leave sent to the Respondent on 17th May by email and shown in the rent statement accompanying the notice. Mr McKeown submitted that in the circumstances where the tenant was made aware of the rent arrears from 1st May 2023 for over 14 days it would be reasonable for the Tribunal to allow the sum claimed to be increased to that amount.

5. The Tribunal then adjourned for approximately 40 minutes to allow Mr McKeown to see if it could be verified whether or not the tenant had left the Property and handed back the keys. On the continuation of the CMD Mr McKeown confirmed that he could not confirm that as the letting agent had not heard anything further and would not be carrying out their inspection until the following morning.

Findings in Fact

1. The parties entered into a lease of the Property in the form of a Private Residential tenancy which commenced on 13th April 2021.
2. The Rent due in terms of the lease is £700 per calendar month payable in advance
3. Interest is due in terms of clause 8 of the lease at the rate of 8% on any sums outstanding until payment
4. A Rent increase notice was served on the tenant on 5th April 2022 increasing the rent to £720 from 1st August 2022.
5. The tenant is still living in the Property as at 20th June 2023
6. The rent outstanding at 1st May 2023 is £7,820
7. This sum was intimated on the Respondent with a fresh notice to leave served on 17th May 2023.

• Reasons for Decision

8. The parties have entered into a lease where the Respondent has leased the property from the Applicant and had agreed to pay £700 per month in rent. A rent increase notice was served on 5th April 2022 increasing the rent to £720 from 1st August 2023 and there was no objection to this received from the tenant.
9. The Respondent has failed to pay the full rent due. The Respondent has not paid any rent since 4th August 2022. The sum of £7,820 is due to 1st May 2023.
10. The Respondent was served notice of this application by sheriff officer on 18th May 2023 and has not made any written representations or attended this CMD. The Applicants provided a revised rent statement confirming rent had increased and sought a new payment sum of £8,540 as 14 days notice of this sum had not been given to the Respondent the Tribunal did not agree it would be reasonable to allow an amendment to the sum claimed for this amount but does find it reasonable and appropriate to allow an amendment to the sum claimed to increase it to the sum duly intimated to the Respondent on 17th May namely, £7,820.
11. The Tribunal accepts the written evidence and verbal statements made by the Applicant's solicitor who the Tribunal found clear and credible in his

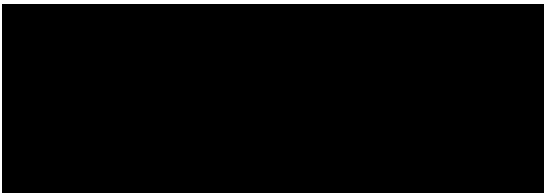
submissions that the rent outstanding as of 1st May is £7,820. In the absence of any representations from the Respondent the Tribunal finds it fair and appropriate to make an order for payment for that sum today. In addition the Tribunal notes that interest may be charged in terms of the clause 8 of the lease at 8% and as this is craved by the Applicant awards this sum of interest from the date of the order to payment. There being no application for time to pay the Tribunal makes an order for payment of the sum claimed with interest at 8%.

- **Decision**

An order for payment of the sum of £7,820 with interest at the rate of 8% is granted.

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.



Legal Member/Chair

Date: 20th June 2023