



**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/23/0958**

**Re: Property at 21F Easter Langside Gardens, Edinburgh, EH22 2FF (“the Property”)**

**Parties:**

**Capita Trust Company LTD As Trustee for Housing Fund For Scotland, 1 Hay Avenue, Edinburgh, EH16 4RW (“the Applicant”)**

**Ms Kelsey McGrouther, 21f Easter Langside Gardens, Edinburgh, EH22 2FF (“the Respondent”)**

**Tribunal Members:**

**Nairn Young (Legal Member) and Eileen Shand (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 Respondent in terms of her private residential tenancy agreement with the Applicant. It called for a case management discussion (‘CMD’) at 10am on 7 August 2023, by teleconference. The Applicant was represented on the call by Mr Caldwell, of Patten & Prentice LLP, solicitors. The Respondent was on the call in-person.

- Findings in Fact

The relevant facts of the case were not in dispute, as follows:

1. The Respondent lets the Property from the Applicant in terms of a private residential tenancy with a start date of 24 September 2020.
2. In terms of the original tenancy agreement, rent of £660 was payable on the first day of each month.
3. The rent has been raised on two occasions, by the statutory notice procedure: from 1 April 2021, to £673.86 per month; and, from 1 June 2022, to £700.14 per month.
4. On the date of the CMD, the Respondent was in arrears of rent of £10,817.21.
5. The tenancy agreement does not make any provision for interest to be applied to any arrears of rent.

- Reasons for Decision

6. As a preliminary matter, the Tribunal was asked by the Applicant to allow the application to be amended to increase the sum sought to £10,817.21. The Respondent accepted that that was the amount of arrears outstanding as at the date of the CMD. The Tribunal therefore allowed the amendment.
7. The Respondent did not object to an order for payment of the arrears being made; but did object to interest of 4% being applied to any award, on the basis that there was no provision in the tenancy agreement for interest to be applied to outstanding sums.
8. The Applicant pointed to the current base rate of interest and pointed out that it was being prevented from having the use of the sums owed for any time

they remain outstanding. It suggested that the rate requested of 4% was fair against that background.

9. The Tribunal considered that it was not fair to apply interest to the award. The application is conjoined with an application for eviction, which was granted largely on the basis that the Respondent will be unable to pay the arrears. In those circumstances, it is difficult to see that the application of interest to the principal sum will provide any real benefit to the Applicant; and it might even be characterised as merely punitive. The tenancy agreement does not provide for interest to be applied to outstanding sums, so the risk of arrears not attracting interest is one that appears to have been accepted by the Applicant, at least initially.

- Decision

**Order made for payment by the Respondent to the Applicant of the sum of TEN THOUSAND, EIGHT HUNDRED AND SEVENTEEN POUNDS AND TWENTY-ONE PENCE STERLING (£10,817.21).**

### **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.**

**Nairn Young**

20<sup>th</sup> August 2023

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**Legal Member/Chair**

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**Date**

