



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/23/2410

Re: Property at 1 Newton of Rothmaise, Steading, Inch, AB52 6UR (“the Property”)

Parties:

John Simpson Tanser, Mrs Kelly Anne Tanser, 1 Handpost Cottages, Basingstoke Road, Swallowfield, Reading RG7 1PY (“the Applicants”)

Mr Andrew John Smith Duncan, Christina Mhairi Ledingham, 1 Newton of Rothmaise, Steading, Inch, AB52 6UR (“the Respondents”)

Tribunal Members:

Graham Harding (Legal Member) and Eileen Shand (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicants were entitled to an order for payment by the Respondent to the Applicants in the sum of £12041.90 with interest at the rate of 5% per annum from the date of the decision until payment.

Background

1. By application dated 18 July 2023 the Applicants applied to the Tribunal for an order for payment in respect of alleged rent arrears and other costs arising from the Respondents’ tenancy of the property. The Applicants submitted a copy of the tenancy agreement together with a rent statement, bank statement and other documents in support of the application.
2. Following further correspondence between the Applicants and the Tribunal administration the sum claimed was increased to £12164.61.

3. By Notice of Acceptance dated 1 August 2023 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion ("CMD") was assigned.
4. Intimation of the CMD was served on the Respondents by Sheriff Officers on 1 September 2023.
5. The Applicants submitted written representations by emails dated 5 and 10 October 2023

The Case Management Discussion

6. A CMD was held by teleconference on 12 October 2023. The Applicants attended in person. The Respondents did not attend nor were they represented. The Tribunal being satisfied that proper intimation had been given to the Respondents determined to proceed in their absence.
7. Mr Tanser advised the Tribunal that the rent arrears currently amounted to £16146.25 but that included £4650.00 for which a previous Tribunal had granted an order for payment. The Tribunal explained that if the Applicants wished to increase the sum claimed then it was necessary to submit an application to amend in terms of Rule 14A of the first-tier Tribunal for Scotland Housing and Property chamber (Procedure) Regulations 2017 ("the Rules") and intimate the application to the Respondents. He accepted that the sum claimed had not been amended in accordance with the Tribunal rules and that in the circumstances the Tribunal could only award the sums previously claimed in the application. The Tribunal also explained that as the tenancy agreement was silent on the question of interest then in terms of the Rules any award of interest was at the discretion of the Tribunal and would only be awarded from the date of the decision. The Tribunal sought to ascertain from the Applicants if they wished the Tribunal to continue the CMD to allow them to amend the sum claimed to take account of the additional rent and other charges said to be due by the Respondents. Having considered their options, the Applicants asked the Tribunal to grant an order in the sum of £12041.90 with interest at a rate to be determined by the Tribunal.

Findings in Fact

8. The Respondents owed rent of £13950.00 as at 17 August 2023.
9. The Applicants obtained an order for payment by the Respondents to the Applicants from the First-tier Tribunal in the sum of £4650.00 under Case Reference FTS/HPC/CV/23/0576.
10. The Applicants incurred charges in respect of the tenancy for legal fees amounting to £864.00.

11. The applicants incurred Sheriff Officers fees arising from the tenancy in the sum of £77.90
12. The Applicant incurred charges of £1800.00 in respect of repairs to the oil tank at the property.

Reasons for Decision

13. The Tribunal was satisfied from the written representations and documents submitted by the Applicant's representatives together with the oral submissions that the Applicant was entitled to an order for payment by the Respondent in the sum of £12041.90.
14. The Tribunal was advised that the Respondent Mr Duncan was in employment and that it was also understood that Ms Ledingham may also be working. In the circumstances given the total failure of the Respondents to make any attempt to pay rent over a prolonged period and the difficulty that has had on the Applicants the Tribunal considers it reasonable that interest is awarded on any sum due by the Respondents to the Applicants and that interest at the rate of 5% per annum from the date of the decision is reasonable in the circumstances.

Decision

15. The Tribunal finds the Applicants entitled to an order for payment by the Respondent to the Applicants in the sum of £12041.90 with interest at the rate of 5% per annum from the date of the decision until payment.

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

**Graham Harding
Legal Member/Chair**

**12 October 2023
Date**

