



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/19/3161

Re: Property at 15 Watson Street, Cowdenbeath, Fife, KY4 8ND (“the Property”)

Parties:

Mr Akhtar Ali, 79 Woodmill Crescent, Dunfermline, Fife, KY11 4AN (“the Applicant”)

Mr Damen Holmes, formerly residing at 15 Watson Street, Cowdenbeath, Fife, KY4 8ND, and whose current whereabouts are unknown (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

This is an application for a payment order dated 3rd October 2019 and brought in terms of Rule 111 (Application for civil proceedings in relation to a private residential tenancy) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant originally sought in his application payment of arrears in rental payments of £3,000.00 as at the date of the application in relation to the Property from the Respondent, and provided with his application copies of the private residential tenancy agreement and rent arrears statement.

Case Management Discussions were held on 20th December 2019 and 7th February 2020, both of which were continued pending the Respondent’s impending eviction

from the Property, in order to allow the Applicant to amend the sum sought in this application to include all rent arrears to the date of the Respondent's departure.

After the tenant quit the Property and the Applicant recovered possession of it on 25th February 2020, the Applicant subsequently on 11th March 2020 amended the sum sought in this application in terms of Rule 14A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended to £4,531.00. That amended figure represents the total arrears of rent calculated until the ending of the lease, and its calculation is shown on an updated rent arrears statement which the Applicant provided.

The private residential tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*, and the procedures set out in that Act appeared to have been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 20th November 2019, and the Tribunal was provided with the execution of service.

A Case Management Discussion was set for 26th March 2020. That Case Management Discussion had to be cancelled as a result of the coronavirus pandemic, and the lockdown imposed in the United Kingdom as a consequence thereof. The Applicant was subsequently notified with the details of a Tele-Conference and provided with dial-in details.

Intimation of the Tele-conference was validly effected by advertisement in terms of Rule 6A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, and the Tribunal was provided with the Certificate of intimation by advertisement.

Case Management Discussion

A Case Management Discussion was held at 11.30 on 18th September 2020 by Tele-Conference. The Applicant did not participate, but was represented by Mr Harris, solicitor. The Respondent did not participate, nor was he represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Tribunal was invited by Mr Harris with reference to the application and papers to grant an order for payment of the sum of £4,531.00 with interest thereon.

Statement of Reasons

The jurisdiction of the Tribunal in relation to Private Residential Tenancies, such as that which applied to the Property, is set by statute. Section 71(1) of the *Private Housing (Tenancies) (Scotland) Act 2016* provides:

“First-tier Tribunal's jurisdiction

- (1) In relation to civil proceedings arising from a private residential tenancy—
- (a) the First-tier Tribunal has whatever competence and jurisdiction a sheriff would have but for paragraph (b),
 - (b) a sheriff does not have competence or jurisdiction.
- (2) For the purposes of subsection (1), civil proceedings are any proceedings other than—
- (a) the prosecution of a criminal offence,
 - (b) any proceedings related to such a prosecution.”

The Tribunal accordingly has jurisdiction to hear civil proceedings arising from a private residential tenancy such as between the parties in this application.

The Tribunal considered the terms of the private residential tenancy agreement, the updated rent arrears statement provided, and the submissions made by Mr Harris, and was satisfied that these disclosed an outstanding balance of rent arrears of the sum sought of £4,531.00, which sum remains outstanding. Rent of £400.00 per month was due in terms of Clause 8 of the tenancy agreement. Accordingly, the Tribunal shall make an order for payment of that sum.

The Applicant also seeks interest on that amount in terms of Rule 41A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

In terms of that rule, the Tribunal may include interest at the rate either stated in the tenancy agreement, or ordered by the Tribunal.

Mr Harris submitted that it is for the Tribunal to order what rate to apply.

In the absence of any guidance on this matter, it appears to the Tribunal to be just to award interest at a rate representing the investment or borrowing rate of lending banks for short term loans, which is currently approximately 3% per annum, and the Tribunal will accordingly do so. Mr Harris indicated that he was content with that approach.

Decision

In these circumstances, the Tribunal will make an order for payment by the Respondent to the Applicant of the sum of £4,531.00 with interest thereon at the rate of three per cent per annum from the date of the decision of the Tribunal 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.

Neil Kinnear

18 September 2020

Legal Member/Chair

Date