



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/21/1712

Re: Property at 16 Huntly Road, Dundee, DD4 7SY (“the Property”)

Parties:

Ms May Delaney, c/o 15 Albert Square, Dundee, DD1 1DJ (“the Applicant”)

Mr Scott Alexander Ross, Ms Jemma Barron, 16 Huntly Road, Dundee, DD4 7SY (“the Respondents”)

Tribunal Members:

Sarah O'Neill (Legal Member) and Elaine Munroe (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order should be granted in favour of the applicant for payment by the respondents of the sum of £7500 with interest thereon at the rate of three per cent (3%) per annum running from the date of this decision until payment.

Background

1. An application was received on 14 July 2021 from the applicant’s solicitor for a payment order brought in terms of rule 111 (Application for civil proceedings in relation to a private residential tenancy) of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”).
2. The applicant was seeking payment of rent arrears of £6250 from the respondents in relation to the property, being the amount of arrears outstanding as at the date of the application.
3. Attached to the application form were:

- (i) Copy Private Residential Tenancy Agreement between the parties which commenced on 24 September 2019.
 - (ii) Copy rent statement dated 25 June 2021, showing the rent outstanding up until 23 July 2021 to be £6250.
 - (iii) Copies of pre-action requirements letters sent to the respondents on 16 and 25 June 2021, stating their outstanding rent arrears to be £5625 and £6250 respectively, together with proof of sending by recorded delivery and proof of delivery for both letters.
4. The application was accepted on 24 August 2021. Notice of the case management discussion (CMD) scheduled for 6 October 2021, together with the application papers and guidance notes, was served on both respondents by sheriff officers on behalf of the tribunal on 8 September 2021.
5. No written representations or application for a time to pay direction were received from the respondents prior to the CMD.

The Case Management Discussion

6. A CMD was held by teleconference call on 6 October 2021. The applicant was represented by Mr Alec Campbell, administrator, of Campbell Boath solicitors. The respondents were not present or represented on the teleconference call.
7. The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a CMD had been duly complied with. The tribunal delayed the start of the CMD by 10 minutes in case the respondents had been detained. They did not appear, however, and no telephone calls, messages or emails had been received from them. The tribunal therefore proceeded with the CMD in the absence of the respondents in terms of rule 29 of the 2017 rules.
8. Mr Campbell said that the respondents had paid no rent since November 2020, and that the current balance of their rent arrears, due as at 23 September 2021, was £7500. He stated that he had submitted an amendment request to the tribunal on 22 September 2021, seeking to amend the sum sought to £7500.
9. The tribunal chairperson noted that the tribunal had not seen this amendment request, and the tribunal clerk advised that no such request could be found on the tribunal's case management system. Following an adjournment, Mr Campbell emailed copies of the relevant correspondence to the tribunal.
10. It was apparent from this correspondence that Mr Campbell had sent an email to the tribunal on 22 September 2021, and that he had received an automated acknowledgement from the tribunal on the same date. Attached to the email

was a letter advising that the respondents had made no payments to account and that the applicant now wished to claim the sum of £7500. Also attached was an updated rent statement, showing the outstanding rent up until 23 September to be £7500. There was also a copy of a letter sent to the respondents on 22 September 2021 enclosing the documents which had been sent to the tribunal, together with proof of sending to the property address on 22 September 2021 and proof of delivery on 23 September 2021.

11. Mr Campbell asked the tribunal to grant an order for the outstanding sum of £7500, indicating that he also wished to seek payment of the rent due after 23 September 2021, which was not shown on the statement, although this had been due on 24 September 2021. He said that he considered that the respondents were aware that this sum was due and were contractually liable to pay this. He also asked the tribunal to award the sum of £250 in respect of what he considered to be 'reasonable legal costs' incurred by the applicant in making the application. He pointed to the terms of clause 9 of the tenancy agreement between the parties in support of this claim.
12. He also asked the tribunal to grant the order with judicial interest at the rate of 8% per annum to be added to the principal sum payable, as set out in the application form.

Findings in Fact

13. The tribunal made the following findings in fact:
 - There was a private residential tenancy in place between the parties, which commenced on 24 September 2019.
 - The rent due under the tenancy agreement was £625 per calendar month payable in advance on the 24th of each month.
 - As at 24 September 2021, the respondents owed the applicant the sum of £7500 in rental payments.

Reasons for Decision

14. Having considered all of the evidence before it, the tribunal decided that it was able to make a decision on the application without a hearing in terms of rules 17 (4) and 18 (1) of the 2017 rules.
15. The tribunal noted that no rent payments had been made by the respondents since November 2020. It considered the amendment request which had been sent by the applicant's solicitor to the tribunal and to the respondents on 22 September 2021. It noted that in terms of rule 14A of the 2017 rules, a party may request to amend the application, including the sum claimed, by intimating the amendment to any other party and to the tribunal at least 14 days prior to a case management discussion. It was clear that the amendment

request had been sent to both the tribunal and to the respondent 14 days prior to the CMD. The tribunal noted that the updated rent statement showed that there was an outstanding balance of £7500 owed by the respondents up to and including 23 September. The tribunal therefore agreed to the amendment to increase the sum sought to £7500.

16. The tribunal was satisfied that the respondents had had fair notice that this sum was due by virtue of the two Pre-Action requirements letters sent to them on 16 and 25 June 2021, and the applicant's amendment request which had been sent to them on 22 September 2021.
17. The tribunal declined to award any further sum in respect of any rent due after 23 September 2021 for the period to 23 October 2021, as requested by Mr Campbell. While the tribunal noted that this sum was due in advance in terms of the tenancy agreement, it was not the tribunal's usual practice to award such a sum. This sum partly covered a period after the date of the CMD and was not shown on the rent statement before the tribunal. It had also not therefore been notified to the respondents or to the tribunal in advance of the CMD.
18. The tribunal also considered Mr Campbell's request for an award of £250 in respect of legal costs incurred by the applicant in respect of the present application before the tribunal. The tribunal noted that clause 9 of the tenancy agreement stated as follows:

"The Landlord will be entitled to pursue the Tenant for any reasonable costs incurred as a result of the Tenant's failure to pay rent on time including but not limited to any charge for returned cheques or any reasonable costs incurred in pursuing the Tenant for payment if [sic] unpaid rent. The recovery of reasonable legal costs and expenses, if determined as appropriate, could also be sought from the Tenant."
19. The tribunal noted that while this clause states that the landlord *could* seek recovery from the tenant of reasonable legal costs and expenses incurred in pursuing the tenant for payment of unpaid rent, there is no requirement on the tribunal to award such costs. Indeed, the tribunal notes that applications to the First-tier Tribunal are free of charge and that the process is designed in such a way as to allow parties to take forward their applications without the need for legal representation. Should a party wish to instruct a legal representative, that is a matter for them, but this is not a requirement.
20. The tribunal also notes that while it has power to award expenses in terms of rule 40 of the 2017 rules, this relates only to expenses related to a party's conduct during the tribunal process itself. It is intended that such expenses are awarded only in exceptional circumstances, where a party has through their unreasonable behaviour in the conduct of a case put the other party to unnecessary or unreasonable expense. The tribunal therefore refuses the

request for the sum of £250 to be added to the sum claimed, in respect of legal costs incurred.

21. The tribunal went on to consider Mr Campbell's request for interest to be granted in relation to the sum claimed. It noted that there was no statutory basis for the tribunal to grant interest at the judicial interest rate of 8% which applies in the sheriff court. In terms of rule 41A of the 2017 rules, the tribunal may include interest when making an order for payment. Any such interest is to be at the rate either a) stated in the relevant tenancy agreement or b) ordered by the tribunal, and it runs from the date of the tribunal's decision.

22. The tribunal noted that the respondents had been given notice of the applicant's intention to claim interest on the sum due, as this had been included in her application. As the tenancy agreement made no provision for interest to be paid, it was therefore for the tribunal to decide whether to include interest, and if so, at which rate. The tribunal decided to grant interest as requested. It considered that an appropriate interest rate would be 3% per annum, given the Bank of England base rate and current rates for borrowing for short term loans.

Decision

23. The tribunal grants an order for payment by the respondents to the applicant for the sum of £7500 with interest thereon at the rate of three per cent (3%) per annum running from the date of this 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.

6th October 2021

Legal Member/Chair

Date