



**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) Act 2016 (“the Act”)**

**Chamber Ref: FTS/HPC/CV/21/2964**

**Re: Property at 5/1 Burnhead Loan, Edinburgh, EH16 6EU (“the Property”)**

**Parties:**

**Ms Karen Flockhart, 94 Gilmerton Dykes Road, Edinburgh, EH17 8PE (“the Applicant”)**

**Marcin Frankowski, 5/1 Burnhead Loan, Edinburgh, EH16 6EU (“the Respondent”)**

**Tribunal Members:**

**Petra Hennig-McFatrige (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision (in absence of the Respondent)**

**Background**

This is an application for payment of outstanding rent and interest lodged with the Tribunal on 30 November 2021 in terms of S 71 (1) of the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act) and Rule 111 of the Procedure Rules.

The Applicant had lodged the following documents in evidence:

- a) the Private Residential Tenancy Agreement (PRT) for the property commencing 13 April 2018
- b) the rent increase letters of 30 January 2019 and 26 February 2020
- c) rent statement up to and including 1 November 2021

A Case Management Discussion (CMD) was scheduled for 18 February 2022. The Respondent was notified of the application and the CMD date and manner of joining through service by Sheriff Officers effected on 12 January 2022. The Tribunal was satisfied that sufficient and correct notice of the CMD and application details had been given to the Respondent.

On 3 February 2022 the Applicant lodged an application to amend the sum craved to £10,640 consisting of £10,340 rent arrears and £300 legal costs due under Clause 36 of the PRT. This had been copied to the Respondent. The invoice for £300 legal fees was lodged. In terms of Rule 14 A the Tribunal granted the application to amend and introduce the legal fees as an additional claim element.

### **The Case Management Discussion**

The Applicant's representative Mr Ken Glass, from Gilson Gray LLP, attended the telephone conference. The Respondent did not attend.

He explained that there had been no direct contact from the Respondent since February 2021 and 16 months' rent arrears were now outstanding. The Applicant had made formal and informal contact with the Respondent offering the option of a payment plan and giving the necessary information regarding Pre Action Requirements for rent arrears but the Respondent had not engaged with the process. The legal fees were due in terms of the contractual arrangements in Clause 36 of the PRT and the Applicant was seeking interest for the outstanding sum at the rate of 4%.

There have been no representations of the Respondent in the case.

### **Findings in Fact**

Based on the documents submitted and the information provided at the CMDs in the case the Tribunal is satisfied that the following facts have been evidenced:

1. The Applicant and the Respondent entered into a Private Residential Tenancy Agreement for the property commencing on 13 April 2018. (Clause 6)
2. Rent of £675 per calendar month was payable in advance on the 1st day of the month (Cause 8).
3. The tenancy is ongoing
4. The rent was correctly increased to £695 from 1 May 2019 and to £710 from 1 June 2020 in terms of Clause 10.
5. As at the date of the CMD rent arrears of £10,340 had accrued, representing 16 months of non payment. No rent had been paid at all since 16 December 2020.
6. Costs of £300 in form of legal fees in terms of invoice 053570 dated 31 January 2022 by Messrs Gilson Gray to the Applicant had been incurred by the Applicant in the process of recovering unpaid rent in terms of Clause 36.
7. A rate of interest of 4% per annum is reasonable in the current financial climate.

### **Reasons for decision**

1. The Tribunal considered that the material facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
  - (b) by videoconference; or
  - (c) by conference call.
- (2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.
- (3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—
- (a) identifying the issues to be resolved;
  - (b) identifying what facts are agreed between the parties;
  - (c) raising with parties any issues it requires to be addressed;
  - (d) discussing what witnesses, documents and other evidence will be required;
  - (e) discussing whether or not a hearing is required; and
  - (f) discussing an application to recall a decision.
- (4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

## 2. However, in terms of Rule 18 of the Rules of Procedure:

Power to determine the proceedings without a hearing

- 18.—(1) Subject to paragraph (2), the First-tier Tribunal—
- (a) may make a decision without a hearing if the First-tier Tribunal considers that—
    - (i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
    - (ii) to do so will not be contrary to the interests of the parties; and
  - (b) must make a decision without a hearing where the decision relates to—
    - (i) correcting; or
    - (ii) reviewing on a point of law, a decision made by the First-tier Tribunal.
- (2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

3. The documents lodged are referred to for their terms and held to be incorporated herein. The Tribunal makes the decision on the basis of the documents lodged by the Applicant and the information given at CMDs.

4. The Tribunal did not consider that there was any need for a hearing as there had been no defence lodged by the Respondent and the application had not been opposed. In terms of Rule 18 of the Rules of Procedure the Tribunal is satisfied that it is not contrary to the interests of the parties to make a decision at the CMD and that the information available in document form and from the Applicant's representative at the CMD allows sufficient findings to determine the case.

5. The Respondent had fair notice of the representations of the Applicant forming the reasons for the application and the arrears, interest and cost amount and had not challenged these.

6. The Tribunal is satisfied that the Respondent had entered into a Private Residential Tenancy Agreement with the Applicant for the property and had failed to make the necessary rental payments as shown in the arrears statements

lodged. The Respondent had not put forward any reason why the rent should not be due. The Tribunal is satisfied that the rent arrears remaining outstanding up to the date of the CMD remain outstanding and costs of £300 in trying to recover these had arisen to the Applicant. Clause 36 explicitly allows for the recovery of such costs.

7. The Applicant is entitled to a payment order for the sum of £10,640 for the rent arrears due up to and including February 2022 and the legal fees of £300 incurred.

8. There are no provisions for interest payments on rent arrears in the PRT. However, in terms of Rule 41 A of the Procedural Rules

**"Interest on orders for payment**

41A.—(1) The First-tier Tribunal may include interest when making an order for payment.

(2) Where paragraph (1) applies, the interest is to be at the rate either—

(a) stated in the relevant tenancy agreement, or

(b) ordered by the First-tier Tribunal,

and running from the date of the decision of the First-tier Tribunal."

the Tribunal considers that in this case interest on the outstanding amount should be paid at the rate of 4 % per annum.

9. The decision of the Tribunal is unanimous.

**Decision:**

**The Tribunal grants the order for payment of the amount of £10,640 by the Respondent to the Applicant together with interest at the rate of 4% per annum from the date of the decision on 18 February 2022.**

**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.**



**Petra Hennig McFatridge  
Legal Member/Chair**

**18 February 2022  
Date**