

Housing and Property Chamber
First-tier Tribunal for Scotland



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/23/0752

Re: Property at 68 Mount Pleasant Way, Kilmarnock, KA3 1HJ (“the Property”)

Parties:

Mr David Alastair Stewart, 13 King's View Crescent, Ratho, Newbridge, EH28 8AF (“the Applicant”)

Mr Stephen Cargill, 68 Mount Pleasant Way, Kilmarnock, KA3 1HJ (“the Respondent”)

Tribunal Member:

Karen Kirk (Legal Member)

Decision (in absence of the Respondent)

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

- 1. granted an order for payment against the Respondents for £3550.42, and**
- 2. awarded interest thereon at the rate of 5 (FIVE) percent per annum running from the date of the decision of the First-tier Tribunal to grant this order, being 25th August 2023, until payment.**

This was the second Case Management Discussion to consider the application dated 8th March 2023 for civil proceedings in respect of a Private Residential Tenancy under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016. The discussion took place by teleconference. The purpose of the hearing being to explore how the parties' dispute may be efficiently resolved.

1. Attendance and Representation

The Applicant was not present but was represented by Elena-Lucia Petrescu, Barnetts Solicitors, 7/9 Grange Place Kilmarnock, KA1 2BH.

The Respondent was not present, he had previously been intimidated upon by Sheriff Officer before the last CMD.

2. Preliminary Matters

- a) Just prior to that Case Management Discussion the Respondent sent an email to the Tribunal Administration stating he was unable to attend due to a family emergency. The Tribunal dealt with this as a preliminary matter and determined that the Respondent should be given another opportunity to attend. The CMD was continued to today's date.
- b) The Respondent was not present and no written representations had been received.
- c) Since the last CMD the Applicant's representation had lodged an application to in terms of Rule 14 of the Tribunal Procedural rules to amend the sum sought to £3550.42. The Applicant's representative said that the rent statement lodged with the application detailed rent arrears until January 2023. The Respondent left the property on the 29th June 2023 and the application to amend the sum sought was to include the rent arrears to the end of the tenancy in the sum of £3550.42. She also sought interest on the sum sought at 8 percent per annum and she made submissions in regards the Tribunals discretion to award interest. The Respondent had been intimidated upon in relation to the application to amend.
- d) There were no other preliminary matters raised or discussed.

3. Case Management Discussion

The Applicant's representative sought a Payment Order in terms of the new and updated rent statement lodged showing arrears of £3550.42. She considered interest at the rate of 8 percent per annum was appropriate given she said the unreasonable behaviour of the Respondent in causing the application to be adjourned and additional costs incurred.

The Applicant's representative said that the Applicant sought a Payment Order for non payment of rent as at 29th June 2023 of £3550.42 plus interest at 8 percent per annum until payment.

Findings in Fact

- 1. The Tribunal was satisfied that a decision could be made in the absence of the Respondent at the hearing and to do so would be in the interests of the parties, in the interests of justice and having regard to the Overriding objective. The Respondent had been served personally by Sheriff Officer and had not provided any written representations or appeared at either hearing. The Tribunal had adjourned the last Case Management Discussion to allow the Respondent a further opportunity to attend.

2. The Applicant and the Respondent entered into a Private Residential Tenancy on 29th January 2021. A copy of same was lodged.
3. Rent per calendar month in terms of the tenancy due by the Respondent was £575.
4. A rent statement dated January 2023 lodged the application showed rent arrears of £2287.
5. An updated rent statement to the date the Respondent left the property was lodged showing rent arrears due by the Respondent to the Applicant at the amount of £3550.42 at the end of the tenancy.
6. The Tribunal found in fact based on the evidence before it that the Respondent was liable for rent until 29th June 2023 to the amount of £3550.42.
7. The Tribunal determined in its discretion having regard to the overriding objective and to the market value interest that it was fair to award interest at 5 percent per annum from the date of the hearing until payment.

4. Reasons for Decision

The Tribunal was satisfied that the Applicants were the heritable proprietors of the Property. The Tribunal was satisfied that there was a Tenancy between parties and that on the evidence provided it was appropriate having regard to the overriding objective of the Tribunal to make a determination at the CMD. The Tribunal was satisfied that the respondents were in arrears of rent lawfully due and a Rent Statement for the property was lodged. Rent owed from same amounted to £3550.42. Accordingly in terms of Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 the Tribunal granted an Order for payment for the sum of £3550.42 against the Respondents. The Applicant's representative sought discretionary interest at 8 percent per annum but the Tribunal in looking at all the circumstances considered that given the current market value interest as at April 2023 that it was fair to award interest at 5 percent per annum from the date of the hearing until payment instead.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons

for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

Karen Kirk

25th August 2023.

Legal Member/Chair

Date