



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/23/1051

Re: Property at 410 Cluny Place, Glenrothes, KY7 4RA (“the Property”)

Parties:

Mr George Armstrong, Kerry Armstrong, Lisa Edwards, 16 Kinnordy Place, Glenrothes, Fife, KY7 4UP; 44 St Thomas, Monymusk, AB51 7HQ; 9 Woods Way, Glenrothes, Fife, KY6 2TG (“the Applicants”)

Mr David Burns, Scott Burns, 17 Overton Road, Kirkcaldy, Fife, KY1 3JQ; 17 Overton Road, Kirkcaldy, Fife, KY1 3JQ (“the Respondents”)

Tribunal Members:

Nicola Irvine (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Order for Payment against the Respondents in favour of the Applicant in the sum of £5,695.24 with interest at the rate of 4% per annum from today’s date until payment.

Background

1. The Applicants submitted an application under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The Applicants sought an order for payment in respect of rent arrears said to have been incurred by the Respondents.
2. A case management discussion (“CMD”) took place on 8 June 2023 and the Tribunal issued a Note and Notice of Direction to parties following that CMD. The Tribunal assigned a Hearing for 7 September 2023 which was to take place by video conference.

3. On 24 August 2023, the Tribunal received an application from the Applicants' representative to amend the sum sued for to £5,695.24 and that application was accompanied by an updated rent statement and affidavits of the First Applicant and a witness. A copy of the application to amend was sent to the Respondents.
4. On 31 August 2023, the Tribunal received an email from the Respondents disagreeing with the affidavits evidence produced on behalf of the Applicants.
5. On 7 September 2023, the Tribunal received an email from the Respondents advising that they would not be attending the Hearing today.

The Hearing – 7 September 2023

6. The Hearing took place by video conference. The Applicants were represented by Ms Chloe Herd. The Respondents did not join the video conference and the Hearing proceeded in their absence.
7. The Applicants' representative moved to amend the sum sued for to £5,965.24 and referred to the updated rent statement. She explained that the tenancy ended on 4 December 2022 and the last rental charge was apportioned to that date. The Applicants relied upon the affidavit evidence submitted in support of the claim and did not lead any additional oral evidence. The Applicants' representative moved for an order for payment in the sum of £5,695.24 with interest at the rate of 8% per year and expenses against the Respondents. The Applicants' representative recognised that there was no contractual provision for interest, but relied upon rule 41A and moved the Tribunal to exercise discretion in awarding interest to the Applicants. She also relied upon Rule 40 and submitted that the Respondents had acted unreasonably in defending these proceedings.

Findings in Fact

8. The parties entered into a private residential tenancy which commenced 12 December 2019.
9. The Respondents were obliged to pay rent at the rate of £500 per month, in advance.
10. The Respondents owe rent arrears amounting to £5,695.24.

Reason for Decision

11. The Tribunal proceeded on the basis of the documents lodged, affidavit evidence and the submissions made at the Hearing. During the CMD on 8 June 2023, the Respondents advised the Tribunal that they had documentary evidence which supported their position that they paid some rent in cash. They also accepted that they owed some money in rent arrears. Despite that position being advanced at the CMD, the Respondents failed to make any payment to

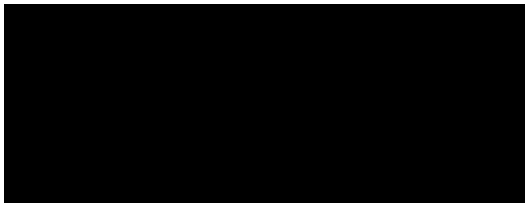
the Applicants, did not comply with the Notice of Direction issued on 8 June 2023 and did not participate in the Hearing. The updated rent statement lodged demonstrated that there are significant arrears of rent due. The amendment application had been intimated to the Respondents. The Tribunal was satisfied that the sum of £5,695.24 is due to the Applicants in respect of rent arrears.

12. The Tribunal observed that the debt due by the Respondents has been outstanding for a significant period of time. Although there was no contractual provision for interest, the Tribunal exercised its discretion in terms of rule 41A and awarded interest on the sum due at the rate of 4% per annum from today's date until payment.

13. The Tribunal was not satisfied that the Respondents' conduct of these proceedings was unreasonable. Although they disputed the claim, there was only 1 CMD and a brief hearing. The Tribunal was not persuaded to find the Respondents liable in the expenses of these proceedings.

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.



Legal Member/Chair

Date 7 September 2023