



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules) in relation to an application for civil proceedings relative to a Private Residential Tenancy under Rule 111 of the Procedure Rules.

Chamber Ref: FTS/HPC/CV/22/0906

Re: Flat 2/R, 244 Clepington Road, Dundee, DD3 8BJ("the Property")

Parties:

Mrs Margaret McVinnie residing at 31 Queen Street, Tayport, DD6 9JZ ("the Applicant")

Ethan Halliburton residing at 29 Thorter Row, Dundee, DD1 3BX ("the Respondent")

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

Tribunal Member: Jacqui Taylor (Legal Member)

Decision (In absence of the Respondent)

The Tribunal determined that an order for payment would be issued requiring the Respondent to pay the Applicant the sum of £2811.30.

Background

1. The Applicant submitted an application to the Tribunal for payment of arrears of rent in the sum of £2811.30 being the sum outstanding as at 7th November 2021 plus interest of 5% from the date of the decision of the First-tier Tribunal until payment. The Application explained that the Respondent was the tenant under a private residential tenancy. Rent was £375 per calendar month in advance. The tenant is in arrears. At the time of the application the full arrears amount to £2811.30. The deposit was paid in full in respect of repair costs so no part of the deposit was paid towards the rent arrears.

2. Documents lodged with the Tribunal.

Documents lodged with the Tribunal by the Applicants were:

2.1 A copy of the Tenancy Agreement.

2.2 Rent Statement

3.Requirements of Section 111 of the Procedure Rules.

3.1 In connection with the requirements of section 111 the Tribunal determined that the application correctly detailed the requirements of section 111(i), (ii) and (iii) of the Procedure Rules namely:-

- (i) the name and address of the Applicant.
- (ii) the name and address of the Respondent.
- (iii) the reason for making the application.

3.2 The Tribunal also confirmed that the application had been accompanied by the documents specified in **Section 111(b)(i) and (ii) and (iii)** of the Procedure Rules being a copy of the lease and the statement of rent arrears.

4.Outcome

4.1 This case called for a conference call Case Management Discussion (CMD) at 10am on 24th June 2022.

The Applicant's representative and solicitor Stewart Forrest of Lindsay's Solicitors attended the CMD

The Respondent did not attend and was not represented.

The Respondent had not provided any written representations.

The Respondent had been served with a letter advising her of the CMD by email and also service by advertisement on the Tribunal website. The Tribunal were satisfied that the requirements of Tribunal Rule 29 had been complied with and continued with the CMD.

4.2 Mr Forrest confirmed the following facts, which were accepted by the Tribunal:

4.2.1 The Applicant is the Landlord of the Property 2/R, 244 Clepington Road, Dundee, DD3 8BJ being the subjects registered in the Land Register of Scotland under Title Number ANG5841('the Property').

4.2.2 The Respondent was the Tenant of the Property in terms of the Private Residential Tenancy between the parties.

4.2.3 The Tenancy commenced on 1st February 2020.

4.2.4 The rent due in terms of the tenancy is £375 per month, payable monthly in advance.

4.2.5 As far as he was aware the Tenant voluntarily left the Property on 7th November 2021.

4.2.6 The rent arrears for the period to 7th November 2021 amounted to £2811.30.

4.3 Representations

Mr Forrest acknowledged that the application included a claim for interest at the rate of 5% per annum from the date of the Tribunal decision until payment. He confirmed that the tenancy agreement does not include a provision for payment. He referred the Tribunal to Tribunal rule 41A and explained that he considered this was sufficient authority entitling the Tribunal to make an award of interest.

Mrs Taylor advised that she did not believe that Tribunal rule 41A provided sufficient authority entitling the Tribunal to make an award of interest and she asked Mr Forrest if he wished the Case Management Discussion to be continued to enable him to provide authority to the Tribunal. The Tribunal had a short adjournment to allow Mr Forrest to take instructions. Following the short adjournment Mr Forrest advised the Tribunal that he wished to amend the application to delete the application for interest.

5. Decision

5.1 The Tribunal were mindful of the over riding objective of the Tribunal to avoid delay and accepted Mr Forrest's application to amend the application to remove the application for payment of interest as removing this part of the application did not prejudice the Respondent.

5.2 The Tribunal accepted as correct the evidence of the rent statement produced which showed the outstanding rent to be £2811.30 as at 7th November 2021, a copy of which had been provided to the Respondent.

5.3 The Tribunal determined that the outstanding rent due by the Respondent amounted to £2811.30 and accordingly they issued an Order for Payment in this sum.

6. 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.

J. T

..... Legal Member

24th June 2022