



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 1 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/22/1220

Re: Property at 32E Constitution Street, Dundee, DD3 6ND (“the Property”)

Parties:

RHM Contracts Ltd, 3 Kings Hill Meadow, Bude, Cornwall, EX23 8SR (“the Applicant”)

Mr Alex Forootann, 43 Oaklands Road, London, NW2 6DJ (“the Respondent”)

Tribunal Members:

Yvonne McKenna (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order be granted against the Respondent for payment of £1500.40 to the Applicant; with interest on £1410.40 only at the rate of 3.25% from 10 June 2022 until payment

Background

1. The application was accepted by the tribunal on 10 June 2022. The Applicant seeks a payment order and interest in relation to unpaid rent and relative charges pertaining thereto in respect of the Property.
2. The application discloses that an order had been made under reference FTS/HPC/CV/21/2645 by a tribunal which included rent arrears of £3553.02 for the rent up to and including 31 December 2021 in respect of the Property.
3. The details of the application were provided by advertisement which appeared on the Service by Advertisement page of the website of the First-tier Tribunal for not less than 14 days.

4. A Case Management Discussion (CMD) took place on 31 August 2022 at 2 pm by conference call.
5. The Respondent did not participate. The Respondent's address was at that stage unknown. The tribunal had sight of the Certificate of Service by Advertisement relating to the entry on the Service by Advertisement page of the website of the First-tier Tribunal and proceeded in the Respondent's absence.
6. The Tribunal proceeded on 31 August 2022 to grant an Order for Payment in identical terms to the Order granted today.
7. The decision with Statement of Reasons was published on the Tribunal's website.
8. On 10 September 2022 the Respondent contacted the Tribunal administration asserting that there had been a breakdown in communication and that he had not received any letters or e-mails regarding the tribunal matter. He stated that he had noticed that there was a spelling mistake in his e-mail address. He submitted an application for recall on 20 September 2022.
9. The Tribunal considered the application for recall on 22 September 2022 and granted that recall application. The Tribunal determined that the earlier decision of 31 August 2022 should be recalled.
10. A CMD was scheduled to take place on 18 January 2023 at 10am to determine further procedure.
11. On 10 January 2023 the Respondent contacted the Tribunal stating that he wished to withdraw his application for recall. It was pointed out to parties that a decision had already been made in relation to the recall and this had been granted. In the circumstances the CMD on 18 January 2023 would still proceed.

The Case Management Hearing 18 January 2023

12. The CMD took place by teleconference on 18 January 2023 at 2pm.
13. The Hearing was intimated to parties effectively.
14. The Applicant was not present but was represented by Mr David Gray of Gilson Gray LLP. The Respondent did not attend and was not represented.
15. Mr Gray said that he had several extensive conversations with the Respondent. An arrangement had been put in place in relation to the rent arrears. The Respondent did not wish to insist on the application for a recall. An earlier Order for Payment had been made by the Tribunal for

the amount of £3553.02 in January 2022 in respect of the application FTS/HPC/CV/21/2645. The Respondent had sought recall of that decision but this had been refused as it was out of time by the Tribunal.

16. The Respondent has put into place a re-payment at the rate of £400 per month. This payment is being allocated in the first instance towards the Order for Payment granted in January 2022. No payments have accordingly been made in respect of the rent arrears detailed in this application.
17. The Applicant seeks an Order for payment in the terms that were granted on 31 August 2022.
18. Mr Gray also detailed that the Respondent's correct surname is "Forootann" and sought to amend the name accordingly.
19. The paperwork submitted along with the application was examined and discussed.
20. The Applicant is the registered owner of the Property and landlord.
21. A Private Residential Tenancy (PRT) was entered into between the Applicant and the Respondent on 9 March 2020 with a start date of 10 September 2020.
22. The contractual rent being £400 per calendar month payable in advance on the first of the month.
23. The application discloses that an order had been made under reference FTS/HPC/CV/21/2645 by a tribunal which included rent arrears of £3553.02 for the rent up to and including 31 December 2021.
24. In this application a further £1600 of rent arrears were claimed up to 30 April 2022. However, the tenancy had ended on 16 April 2022. It was agreed that the correct figure of rent due up to the end of the tenancy in this application should be £1410.40.
25. The Applicant also sought recovery of reasonable costs incurred as a result of the tenant's failure to pay rent including but not limited to any reasonable costs incurred pursuing the Respondent for unpaid rent. The sum sought in the application is £300 inclusive of VAT as shown in the solicitor's invoice dated 16 August 2022 to the Applicant's Letting Agent.
26. Contractual interest is sought on unpaid rent to which this application relates.
27. Mr Gray confirmed that he sought £1410.40 in rent arrears together with contractual interest and £90 by way of charges.

Findings in Fact

28. A Private Residential Tenancy (PRT) was entered into between the Parties on 9 March 2020, with a start date of 10 September 2020.
29. The contractual rent due by the Respondent to the Applicant is £400 per calendar month payable in advance on the first of the month.
30. The tenancy ended on 16 April 2022.
31. An order had been made under reference FTS/HPC/CV/21/2645 by a tribunal which included rent arrears of £3553.02 for the rent up to and including 31 December 2021.
32. The sum due of unpaid rent arrears in this application for the period 1 January 2022 to 16 April 2022 is £1410.40.
33. The Applicant is contractually entitled to recover from the Respondent the sum of £90 by way of 'Charges' for making this application to the First-tier Tribunal.
34. A payment Order in the total sum of £1500.40 is granted.
35. The Applicant is contractually entitled to interest on overdue rent from the day the rent was charged until it is paid at a rate of 2.5% over the Bank of England Base rate.
36. The application of interest is granted to run from the date the application was accepted by the tribunal, 10 June 2022.
37. At the date of the first CMD when this matter was dealt with by the Tribunal on 31 August 2022, the relevant Bank of England base rate was 0.75%.
38. Contractual interest due on unpaid rent of £1410.40 running from 10 June 2022 until it is paid is 3.25%.

Reasons for Decision

39. The Respondent has indicated in communication sent to the Tribunal and in discussions with the Applicant's Representative that he does not oppose the Order for Payment in the terms sought and that he wished to withdraw his application for recall of the Order for Payment granted on 31 August 2022.
40. The Tribunal had regard to all that was said and carefully considered the paperwork produced.
41. The contractual rent due by the Respondent to the Applicant is £400 per calendar month payable in advance on the first of the month.
42. The tenancy ended on 16 April 2022
43. The sum due by the Respondent to the Applicant of unpaid rent arrears in this application in respect of the Property is for the period 1 January 2022 to 16 April 2022. This amounts to £1410.40.

44. The Applicant is contractually entitled to recover from the Respondent the sum of £90 by way of Charges for its Letting Agent making this application to the Tribunal in terms of Part 37.3 subsection 4 of the PRT. The Tribunal notes that the Letting Agent has instructed solicitors to make this application and that the fee charged by the solicitors is higher than that figure. The Tribunal take the view that contractually the Applicant is entitled to recover from the Respondent £90 in terms of the PRT.
45. A Payment Order in the sum of £1500.40 is granted.
46. The Applicant is contractually entitled to interest on overdue rent from the day the rent was charged until it is paid at a rate of 2,5% over the Bank of England Base Rate by way of 'Charges' in terms of Part 37.3, subsection 1 of the PRT. The Applicant has accepted that interest is due from the date the application was accepted by the Tribunal which was 10 June 2022.
47. The original decision of the Tribunal on 31 August 2022 detailed that the contractual interest granted on unpaid rent of £1410.40 from 10 June 2022 until it is paid is 3.25%.
48. The Respondent recalled that decision but no longer wishes to do so.
49. The original interest rate should therefore be applied in terms of the Tribunal's decision of 31 August 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.

18 January 2023

Legal Member/Chair

Date