



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
act 2014**

Chamber Ref: FTS/HPC/CV/19/2039

**Re: Property at 5/3 East Pilton Farm Rigg, Edinburgh, EH5 2GD (“the
Property”)**

Parties:

Mr Akhtar Ali, 1 Kirkwall Grove, Kirkcaldy, KY12 6FP (“the Applicant”)

**Mr Rufai Adesola, Mrs Oluwakemi Adesola, 5/3 East Pilton Farm Rigg,
Edinburgh, EH5 2GD (“the Respondent”)**

Tribunal Members:

George Clark (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the application should be refused.**

Background

By application, received by the Tribunal on 2 July 2019, the Applicant sought an Order for Payment against the Respondent, in respect of unpaid rent and late payment fees that had lawfully become due to him by the Respondent. The sum sought was £272.26 rent and £120 late payment fees and the Applicant wished to include any further rent arrears or late payment fees that arose between the date of the application and the date of the Tribunal’s Decision.

The application was accompanied by copies of a Short Assured Tenancy Agreement between the parties, commencing on 19 February 2016 at a monthly rent of £750, a Rent Statement showing arrears as at 26 June 2019 of £392.26 (which included late payment charges of £120) and an e-mail to the Respondent dated 23 May 2018, intimating a rent increase to £795 with effect from 1 August 2018.

On 29 August 2019, the Tribunal advised the Parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written representations by 19 September 2019. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held at Riverside House, Gorgie Road, Edinburgh on the afternoon of 7 October. The Applicant was represented by Olivia Morrad of Braemore Sales and Lettings, Edinburgh. The Respondent was not present or represented. The Applicant's representative provided the Tribunal with an updated Rent Statement showing arrears as at of £656.26, including late payment charges of £384.

The Tribunal told the Applicant's representative that it had noted from the papers which accompanied the application that an increase in rent with effect from 1 August 2018 had been intimated to the Respondent by e-mail on 23 May 2018. The Applicant had not, however, provided evidence that the notice of any proposed rent increase for an Assured Tenancy had been given "in prescribed form", as required by Section 24 of the 1988 Act. The Applicant's representative was unable to provide the Tribunal with a copy of the required Form AT2 Notice. The Tribunal noted that the Respondent had, by e-mail dated 23 May 2018, requested a postponement of the rent increase, but there was no evidence provided to indicate that the Respondent had been made aware of the right to refer the proposed rent increase to the Tribunal for a rent determination. This would have been specified if the Notice had been given in prescribed form. There was also with the papers which accompanied the application a copy of a letter from the Respondent to the Applicant's representative requesting an extension of time for the rental increase, which appeared to have been applied for the whole period from 1 August 2018 to 30 April 2019, on 10 April 2019. The Rent Statement showed the sum of £750 being debited and credited each month up to and including 3 April 2019. The first time the rent applied had been £795 was 1 May 2019, but £750 had been paid on 3 May and 17 June 2019, with the Respondent having made a further payment of £222.74 on 20 June 2019. The updated Rent Statement showed that the Respondent had continued to pay £750 per month, but had made four "top-up" payments of £45, beginning in July 2019.

The Applicant's representative told the Tribunal that the increase in monthly rent had not been posted to the Rent Statement for 9 months due to a change of computer system, and, after a short adjournment, confirmed that no Form AT2 Notice had been sent to the Respondent.

Reasons for Decision

The Tribunal was of the view that the Applicant had failed to follow the procedures laid down in the 1988 Act for dealing with intimation of a proposed increase in rent. Accordingly, the additional sums of £45 per month were not lawfully due by the Respondent. The Tribunal was not prepared to make an Order in respect of the £405 debited to the Rent Statement on 10 April 2019, as it represented 9 times the £45 increase. This sum had not become lawfully due by the Respondent to the Applicant as the required notification in prescribed form had not been given, as a result of which the Respondent had not been advised of the right to refer the proposed increase to the Tribunal. There had been no rent arrears until the £405 charge was debited and, since then, the Respondent had been paying rent at £750 per month. This meant that the late payment charges could not be applied, as the rent had not been in arrears. Accordingly, the Tribunal was unable to make an Order for Payment in respect of a further £384.

Taking these two figures together indicated that the sum of £789 was not lawfully due by the Respondent and, as this was more than the sum sought by the Applicant, the Tribunal decided to refuse the application.

The Tribunal noted that the Respondent had made four payments of £45 between 11 July 2019 and 3 October 2019 to "top-up" the monthly payments of £750. The Tribunal held that these payments were not lawfully due, as the rent remained at £750 per month. The Applicant should take steps to refund these payments to the Respondent and should also examine the Rent Statement closely to determine whether the Respondent is entitled to a further refund or partial refund of the payment of £222.74 received by the Applicant's representative on 20 June 2019.

The Tribunal accepted that the Applicant's representative had made an inadvertent mistake in failing to follow the correct procedure for intimating the proposed rent increase in May 2018, but the consequence had been that the Respondent had not been made aware of the right to refer the proposed increase to the Tribunal for determination and the fact that the Respondent had, during the last few months, actually paid the increased rent by "top-up" payments was not relevant to the situation, as the Respondent was unaware that the correct procedure had not been followed and that the opportunity to refer the increase had been denied.

Decision

The Tribunal determined that the application should be refused.

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

7 October 2019

Date