

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/19/2581

Re: Property at 11/2 Prestonfield Crescent, Edinburgh, EH16 5EN (“the Property”)

Parties:

Mr Behnham Anisi, 3 Tudsbery Avenue, Edinburgh, EH16 4GX (“the Applicant”)

Mr Jason Froude, 11/2 Prestonfield Crescent, Edinburgh, EH16 5EN (“the Respondent”)

Tribunal Members:

Eleanor Mannion (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

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

1. A Hearing took place on the 14th November 2019. The Applicant was in attendance and represented by Ms Stewart of McEwan Fraser Legal. The Respondent was not in attendance and had not responded to the application.
2. The application made by the Applicant on the 12th August 2019 was one for order of payment in respect of outstanding rent arrears. The application set out that monthly rental payment was £770. This payment was not made by the Respondent in June, July or August 2019. The only rental payment the Respondent had made in respect of the tenancy was the initial rental payment of £879 in May 2019. The application sought an order for payment of £2,310 together with judicial interest of 8% per annum until payment is made.
3. On the 29th October 2019, the Applicant sought to amend his application under Rule 14 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”), to include the

non-payment of rent in September and October 2019. The total rent sought under the amended application was £3,850 plus judicial interest of 8% per annum. A copy of this amendment application was provided to the Respondent. .

4. A further amendment application was made orally at the outset of the hearing alleging that the Respondent failed to make a rental payment for November 2019. The Applicant indicated that he was seeking an order for outstanding rental payments of £3,927 plus judicial interest of 8% per annum. Notice of this oral application was not provided to the Respondent in advance of today's hearing.
5. Ms Stewart acknowledged that the Respondent had not been made aware of the oral application to amend and advised that the Respondent was not informed that a further increase would be sought. She submitted that it was necessary to amend the application as the rent was still unpaid and this was causing financial difficulty for the Applicant.
6. The Tribunal was advised that the Respondent remains in the property and that he has changed the locks. The Respondent is living in the property by himself. He is working and has a joinery business. The Applicant is not aware of the Respondent being in receipt of any benefits. The Tribunal was advised that the Respondent has not indicated why he has failed to pay his rent.
7. Ms Stewart submitted that as well as the rent arrears, the Applicant also sought judicial interest of 8%. She submitted that this was necessary as the Respondent had not engaged in the process to date and the Applicant has been put to the expense of taking legal advice and pursuing him via the Tribunal system. She submitted that the Respondent showed complete disregard to the system.
8. Having considered the paperwork lodged and the submissions made by and on behalf of the Applicant, the Tribunal consents to the amendment of the 29th October 2019, to include the non-payment of rent for September and October 2019. The Tribunal refuses the oral application to amend made at today's hearing, 14th November 2019, as the Respondent has not had fair notice of this application. Further, as the November rental payment is due today, 14th November, the Respondent has until 11.59pm to make that payment.
9. The Tribunal grants an order in respect of the outstanding rent for June, July, August, September and October 2019 which totals £3,850.
10. The Tribunal refuses to include judicial interest at a rate of 8% on this order. While judicial interest at a rate of 8% is permitted on Sheriff Court decrees pursuant to Section 4 of the Administration of Justice (Scotland) Act 1972, the Tribunal was not content that the jurisdiction and authority to make an order for judicial interest transferred to the First Tier Tribunal when it was set up.

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.

Eleanor Mannion

Legal Member/Chair

14/11/19

Date