



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/22/1932

Re: Property at 46 Torwood Avenue, Grangemouth, FK3 0DN (“the Property”)

Parties:

Mr Thomas Chalmers, 12527 Wandering Brook Drive, Charlotte, North Carolina, 28273, United States (“the Applicant”)

Mr William Gillespie, 46 Torwood Avenue, Grangemouth, FK3 0DN (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it should make an order for payment for the sum of TEN THOUSAND FOUR HUNDRED AND FIFTY POUNDS (£10,450.00) STERLING

Background

1. An application had been received under Rule 111 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking a payment order against the Respondent.
2. The application contained:-
 - a copy of the tenancy agreement,
 - a copy of the rent statement

3. The Applicant and his representative, Ms Donnelly from TC Young, appeared on behalf of the Applicant. There was no appearance by the Respondent.
4. The tribunal would note that Ms Prochalska from Shelter appeared on behalf of the Respondent in relation to an application for eviction which was heard at the same time. She was not instructed in this matter however. It appeared to the tribunal that the respondent was aware that this application being heard on 13 September 2022. The tribunal adjourned the proceedings in order for the respondent's agent to try and contact him and ask him to phone in. She was not able to contact him however. Notice of the Hearing and the application had been served on the Respondent by sheriff officers. Given all of this the tribunal was prepared to proceed in his absence.
5. The applicant's agent had submitted an updated rent statement prior to the case management discussion taking place.

Discussion

6. The applicant's agent asked the tribunal to grant the order for payment together with an order for interest at 3% from the date of the decision. She advised that the arrears were now £11,725.00. The last payment was on 26 October 2020. There was submitted a tenancy agreement and rent statement in support of the application. She asked that interest be awarded in terms of the tribunal's discretionary right under rule 41A. She submitted that 3% is an appropriate figure as it reflects the current interest rates, the sum due is significant and it will take some before it is reduced.

Findings in Fact

7. The Tribunal found the following facts established:-
8. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 26 April 2019.
9. The tenancy was for the property 46 Torwood Avenue, Grangemouth.
10. The tenant is William Gillespie.

11. The landlord is Thomas Chalmers.
12. Clause 8 of the Tenancy Agreement provides that the rent for the property is £425 per calendar month. It is payable in advance and due on the 26th of each month.
13. There appeared to be rent arrears outstanding which totalled at least £10,450 at the date of the application and they were still outstanding at the date of the case management hearing.

Reasons for Decision

14. Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 provides that the First Tier Tribunal has jurisdiction in relation to civil proceedings arising from private residential tenancies. As this tenancy is a private residential tenancy we are content that we have jurisdiction to deal with this case.
15. The tenancy agreement created obligations between the parties, which included paying rent. The Respondent had failed to make full payment of his rent. There was submitted a rental statement showing the arrears due. The Applicant's agent submitted that the Respondent was in breach of the condition of the tenancy agreement regarding payment of rent. There was evidence in support of the claim.
16. On the basis of the evidence submitted and having regard to all papers submitted including the application, we consider that we should make an order for the sum sued.
17. We were also asked to award interest in terms of our discretionary right to do so under rule 41A of the tribunal rules. The amount of interest sought in the claim was unspecified. The claim was not based on any contractual interest due in terms of the lease. We note that there are rent arrears for the property, and we accept that there are sums due to the applicant. We understand however that the respondent is in receipt of benefits. We are not aware of him having other income. While we accept that the applicant is disadvantaged by the respondent's failure to pay sums due, we consider on balance that the impact of awarding interest on sums due against the respondent may be particularly detrimental to him, having regard to the current economic pressures affecting people, especially those on low incomes. Furthermore, there is no provision for interest to be sought in the tenancy agreement, and we consider that the parties were free to negotiate such a term but chose not to do so. We

are not therefore persuaded that it is reasonable to award interest in this case. Accordingly, we refuse to make an award for interest in this case.

Decision

18. We grant an order in favour of the Applicant for TEN THOUSAND FOUR HUNDRED AND FIFTY POUNDS (£10,450) STERLING against the Respondent.

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.

Melanie Barbour

21/09/22

Legal Member/Chair

Date