



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 (1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/21/2865**

**Re: Property at 15 Ballinard Road, Broughty Ferry, Dundee, DD5 3LG (“the Property”)**

**Parties:**

**Mr Peter Soutar Low, 3 Copper Beach Row, Baldovie, Broughty Ferry, DD5 3NU (“the Applicant”)**

**Mr Charles Ferguson, Ms Rebekah Moorehead, 15 Ballinard Road, Broughty Ferry, Dundee, DD5 3LG (“the Respondent”)**

**Tribunal Members:**

**Petra Hennig-McFatrige (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order for the amount of £ 5,393.55 by the Respondents to the Applicant should be granted, together with interest at the rate of 8% per annum from the date of the decision.**

**Background and Case Management Discussion**

1. The application for an order for payment of rent arrears under S 71 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) arising from a Private Residential Tenancy Agreement between the parties was made by the Applicant's representatives T C Young on 16 11. 2021.
2. The following documents were lodged to support the application:
  - a. Copy Private Residential Tenancy (PRT) commencing 19.3. 2021 for the property
  - b. Rent Statement to 5.11.2021
  - c. Updated rent statement 19.3.2021 to 5.1.2022
  - d. Motion under rule 14A and intimation letters of same by Applicant to Respondent on 5.1.2022

3. The application was originally for a payment order in the sum £3,593.55 and indicated as the Rule applicable Rule 111 of the Procedural Rules.
4. On 21.12. 2021 the Respondents were served with the case papers and the notification for the Case Management Discussion (CMD) on 20.1.2022 by Sheriff Officers. The Tribunal was satisfied that the Respondents had the required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.
5. No representations from the Respondent were received by the Tribunal.
6. By correspondence of 5.1.2022 the Applicant's representatives moved for an amendment of the sum outstanding to £5,393.55 and submitted an up to date rent statement for the period up to and including 5.1.2022, which had also been sent to the Respondent by recorded delivery letter dated 5.1.2022.
7. The CMD took place on 20.1.2022 by telephone conference call.
8. The Applicant's legal representative Ms Morrison participated, the Respondents did not participate.
9. Ms Morrison confirmed that the Respondents had not made any contact and had not offered any payment suggestions. The rent had initially been paid by the Respondents as shown on the up to date rent statement. She moved for the amendment to be granted and for the order to be granted for the outstanding amount of £5,393.55 as per the amendment request, together with interest in terms of Rule 41A of the Procedural Rules at the contractual rate of 8% as stated in the tenancy agreement.
10. In terms of Rule 14A the Tribunal was satisfied that the amendment had been properly and timely intimated to the Respondents. The application to amend the sum sought was granted.

#### **Findings in Fact:**

1. The property was let on a Private Residential Tenancy Agreement commencing on 19.3.2021
2. The parties are the landlord and tenants of said Tenancy Agreement.
3. The tenancy is ongoing and the Respondents still occupy the property.
4. The monthly rent of £900 is payable monthly in advance.
5. Rent arrears accrued as per the Rent Statement up to 5.1.2022, there has been no change since.
6. Clause 8 of the tenancy agreement stipulates interest of 8% per year for unpaid sums.
7. The arrears of rent due as at the date of the CMD are £5,393.55

#### **Reasons for Decision:**

1. The Tribunal considered that the material facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

##### **Case management discussion**

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or
- (c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;

- (b) identifying what facts are agreed between the parties;
  - (c) raising with parties any issues it requires to be addressed;
  - (d) discussing what witnesses, documents and other evidence will be required;
  - (e) discussing whether or not a hearing is required; and
  - (f) discussing an application to recall a decision.
- (4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

## 2. However, in terms of Rule 18 of the Rules of Procedure:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—  
(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,  
a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

3. The documents lodged are referred to for their terms and held to be incorporated herein.

4. The Tribunal did not consider that there was any need for a hearing as there had been no representations from the Respondents and the application had not been opposed.

5. The Tribunal makes the decision on the basis of the documents lodged on behalf of the Applicant and the information given at CMD.

6. The Respondents had fair notice of the representations of the Applicant forming the reasons for the application and have not challenged these. As no representations were received from the Respondents by the Tribunal, the facts of the case are not in dispute. This includes the rental statement up to 5.1.2022

7. The Tribunal was satisfied that the Applicant's Representative had followed the correct amendment process in terms of Rule 14A of the Procedural Rules and that the application was thus amended to the amount of £5,393.55 outstanding at present.

8. The Tribunal is satisfied that the Respondents had entered into a Private Residential Tenancy Agreement with the Applicant for the property with a monthly rental charge of £900 as stated in clause 8 of the PRT and an annual interest rate of 8 % as stated in clause 8 of the PRT. The arrears outstanding are the £5,393.55 requested in the amendment and set out in the up to date rent statement.

9. The Applicant is entitled to a payment order for the sum of £5,393.55 for the rent arrears for the rental due up to and including 5 January 2022 as claimed in the amended application for rent arrears accrued under the tenancy agreement to that date.

10. Rule 41 A of the Procedural Rules states:

**"Interest on orders for payment**

41A.—(1) The First-tier Tribunal may include interest when making an order for payment.

(2) Where paragraph (1) applies, the interest is to be at the rate either—

(a) stated in the relevant tenancy agreement, or

(b) ordered by the First-tier Tribunal,

and running from the date of the decision of the First-tier Tribunal."

In terms of clause 8 of the PRT and rule 41A of the Rules of Procedure the Tribunal considers that in this case interest on the outstanding amount should be paid at the contractual rate of 8 % per annum from the date of the decision.

**Decision:**

**The Tribunal grants the order for payment of the amount of £5,393.55 by the Respondents to the Applicant together with interest at the rate of 8% per annum from the date of the decision on 20 January 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.**

**Petra Hennig McFatrige  
Legal Member/Chair**

**20 January 2022  
Date**