



**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/22/1768

Re: Property at 33 Flat A, Mill Lane, Montrose, DD10 8BX (“the Property”)

Parties:

Ms Fiona Anne Tamm, 65 AF/R Rosemount Viaduct, Aberdeen, AB25 1NR (“the Applicant”)

Mr Lewis John McEwan, 17 Bridge Street, Brechin, DD9 6HX (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member)

**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
FOUR THOUSAND AND FIFTY-NINE POUNDS (£4,059.00) 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 and a copy of the rent statement. The applicant had also made an application to amend the sum sued from £3,701.00 to £4,059.00 prior to the papers being served on the respondent by sheriff officers. The application to amend the sum sued had been

served as part of the papers served by the sheriff officers. In addition, the agent for the applicant had also written to the respondent on 13 September 2022 notifying him that they were seeking payment of the amended sum.

3. The Applicant's representative, Ms Donnelly from Messrs TC Young, appeared on behalf of the Applicant. There was no appearance by the Respondent. The Respondent had been served with notice of today's case management discussion by sheriff officers on 4 October 2022. As I was satisfied that he had received notice of this case management discussion I was prepared to proceed in his absence.

Discussion

4. The Applicant's agent asked the tribunal to grant the order for payment for £4,059.00 together with an order for interest from the date of the decision.
5. She advised that the arrears were currently £4,059. The Respondent had vacated the property sometime in June/July 2022. The last payment which had been received was on 18 March 2022. This payment was from universal credit. There was submitted a tenancy agreement and rent statement in support of the application. She advised that there was a deposit which had been paid, this had been retained by the Applicant however, as there were damages to the property which exceeded the total amount of the deposit. Consequently, the deposit monies could not be used to reduce the rent arrears.
6. She asked that interest be awarded in terms of the tribunal's discretionary right under rule 41A. She accepted that there was no contractual provision for interest. She submitted that a rate of 3 or 4 % was the usual figure which was awarded. It reflects the current interest rate. She accepted the failure to make payment had arisen when the Respondent had moved to universal credit, prior to that he had been paying his rent. He had however failed to pay the shortfall or top-up. She advised that he had been given advice about the shortfall, including that he may be entitled to seek benefits to make up the shortfall. He had been advised that he was due to pay the shortfall. She advised that he had

failed to take any action and address it. She accepted that people were experiencing difficult financial times at present.

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 1 June 2020.
9. The tenancy was for the property Flat A, 33 Mill Lane, Montrose, DD10 8BX.
10. The tenant was Lewis John McEwan.
11. The landlord was Fiona Anne Tamm.
12. Clause 7 of the Tenancy Agreement provides that the rent for the property is £495 per calendar month. It is payable in advance and due on the 1st of each month.
13. There appeared to be rent arrears outstanding which totalled at least £3,701 at the date of the application, 8 June 2022 and they were still outstanding at the date of the case management hearing, 7 November 2022.
14. The respondent had vacated the property sometime in June/July 2022.

Reasons for Decision

15. 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 I am content that I have jurisdiction to deal with this case.

16. 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 Respondent was in breach of the condition of the tenancy agreement regarding payment of rent. There was evidence in support of the claim. I would also confirm, for completeness, that I was prepared to amend the sum sued to £4,059.00.
17. On the basis of the evidence submitted and having regard to all papers submitted with the application, I consider that I should make an order for the sum sued.
18. I was also asked to award interest in terms of my 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. I note that there are rent arrears for the property, and I accept that there are sums due to the Applicant. It appears from the rent statement provided that the Respondent had been meeting his rental payments until around May 2021, after that he appears to have been in receipt of benefits. It was at that point, when he moved to benefits, that the rent arrears began to accrue. While I accept that the Applicant is financially disadvantaged by the Respondent's failure to pay sums due; and I accept that he was given advice to pay the rent shortfall or "top-up" due and also, to try and access benefits to pay the shortfall, it is not clear if he would have been entitled to any additional benefits. It did appear that he had ensured that the universal credit payments were made to the Applicant. Having regard to the current economic pressures affecting people, especially those on low incomes or benefits, I consider that the impact of awarding interest on sums due against the Respondent may be more detrimental to him, than it would be to the Applicant. Furthermore, there is no provision for interest to be sought in the tenancy agreement, and I consider that the Applicant had been free to impose such a term but did not do so. I am not therefore persuaded that it is reasonable to award interest in this case. Accordingly, I refuse to make an award for interest in this case.

Decision

19. We grant an order in favour of the Applicant for FOUR THOUSAND AND FIFTY-NINE POUNDS (£4,059.00) 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.

M Barbour

7 NOVEMBER 2022

Legal Member/Chair

Date