



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/22/2838

Re: Property at 37 Strathyre Place, Stoneyburn, Bathgate, West Lothian, EH47 8BE (“the Property”)

Parties:

Miss Ann Gardiner, 23 Harburn Drive, West Calder, West Lothian, EH55 8AL (“the Applicant”)

Miss Candice Farrell, 37 Strathyre Place, Stoneyburn, Bathgate, West Lothian, EH47 8BE (“the Respondent”)

Tribunal Members:

Nairn Young (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

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

- Background

This is an application for an order for payment of rent arrears alleged to be owed by the Respondent, in terms of her private residential tenancy agreement with the Applicant. It called for a case management discussion (‘CMD’) at 10am on 8 December 2022, by teleconference. The Applicant was represented on the call by Ms Mathew of Bannatyne Kirkwood France & Co, solicitors. The Respondent was not represented and did not call in to the conference. By email dated 5 November 2022, the Respondent indicated that she did not intend to attend the CMD. The Tribunal was therefore happy to proceed in her absence.

- Findings in Fact

1. The Respondent rents the Property from the Applicant in terms of a private residential tenancy with a start date of 17 December 2020.
2. In terms of that agreement, rent of £640 is payable on the 17th day of each month.
3. Between 17 March 2021 and 16 August 2022, inclusive, the Respondent has made rent payments totalling £6,370.
4. A deduction of £140 to the arrears was agreed by the Applicant on 17 June 2021.
5. Between 17 March 2021 and 16 August 2022, inclusive, the Respondent's liability for rent was £10,740.
6. The Respondent owes the Applicant £4,370 in rent in respect of the period 17 March 2021 and 16 August 2022, inclusive.
7. The tenancy agreement does not specify that interest should be chargeable on late payments.

- Reasons for Decision

8. The Applicant sent an updated rent statement to the Tribunal on 25 November 2022, to cover the period from the application's submission on 15 August 2022 to 17 November 2022. There was no indication in the communication that an amendment of the sum sought was being applied for. At the CMD the Applicant's representative moved that an amendment be allowed, nonetheless.

9. The Tribunal considers that the Respondent has not been given fair notice of the intention of the Applicant to seek such an amendment. In the first instance, it was not clear that this was the purpose of forwarding the updated rent statement, absent any specific request to amend. Secondly, any such request that could have been inferred would be late in terms of rule 14A of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017.

10. In the course of the CMD, the Applicant's representative also asked the Tribunal to award interest on the principal sum at a rate of 4% p/a from the date of award to payment. The original application asked for interest to be awarded, but did not state what rate it should be awarded at. In the absence of any rate being specified in the tenancy agreement, the Tribunal did not consider that the Respondent had had fair notice of this proposal, either.

11. The Tribunal asked the Applicant's representative to confirm whether she wished to ask for an adjournment to address these issues, but she confirmed that the Applicant would prefer to proceed immediately. The Tribunal therefore made an order for payment of the sum sought in the original application and declined to award interest.

- Decision

Order granted for payment by the Respondent to the Applicant of the sum of £4,370 (FOUR THOUSAND, THREE HUNDRED AND SEVENTY POUNDS STERLING).

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.

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Legal Member/Chair

08/12/2002

Date