



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/23/1218

Re: Property at Flat 16, 22 Lochend Butterfly Way, Edinburgh, EH7 5BF (“the Property”)

Parties:

Cityscape Edinburgh LLP, 1 Hay Avenue, Edinburgh, EH16 4RW (“the Applicant”)

Mr Christopher Lennie, Flat 16, 22 Lochend Butterfly Way, Glasgow, EH7 5BF (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Eileen Shand (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it would grant an order for payment of £15,506.67.

Background

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 111 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for payment.
2. The application contained: -

- (1) the tenancy agreement, and
- (2) rent statement.

2. The applicant's agent Mr Caldwell from Patten and Prentice appeared on behalf of the applicant at the case management discussion on 15 August 2023. The respondent did not appear. There was evidence of service of the papers and notice of the case management discussion on the respondent on 30 June 2023. The tribunal agreed to proceed with the case management discussion in the absence of the respondent.
3. The applicant's agent had written to the tribunal on 3 July 2023 attaching further information, namely an updated rent statement and moving to amend the sum sued in the application to £15,506.67. He had also submitted a further rent statement on 10 August 2023 showing that the rent arrears were now £16,259.43.

Discussion

4. The applicant's agent advised that the applicant was seeking an order payment for the amended sum of £15,506.67. He advised that notice of this amendment had been given to the respondent at least 14 days before this case management discussion.
5. The landlord's agent advised that the respondent had not paid any rent since 17 November 2021. His agent advised that he had sent pre-action protocol letters to the respondents in but there had been no response to those letters.
6. He confirmed that the full address of the property was Flat 16, 22 Lochend Butterfly Way Edinburgh.
7. He moved for interest to be awarded. He submitted that given the current interest rates an award of 4% is not an unreasonable sum to seek. He advised

the arrears were significant and it would be unfair not to award it given the non-payment of rent by the respondent. Further it would be reasonable to award given the current economic climate was difficult for his client. It would be fair to award interest in their favour. He advised he was no longer moving for expenses.

Findings in Fact

8. The Tribunal found the following facts established: -
9. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 15 February 2018.
10. The tenant was Christopher Lennie. He was over 70 years old.
11. The landlord was Cityscape Edinburgh LLP.
12. The property was Flat 16, 22 Lochend Butterfly Way, Edinburgh.
13. Clause 8 of the tenancy stated that rent was £672.08 a calendar month payable in advance.
14. As at 3 July 2023 rent arrears were £15,506.67.
15. As at 15 August 2023 rent arrears were now £16,259.43
16. The respondent had failed to pay any rent at all since November 2021.

REASONS FOR DECISION

17. 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 the tribunal is content that it has jurisdiction to deal with this case.
18. The tenancy agreement created obligations between the parties, which included paying rent. The respondent had failed to make full payment of the rent. There were submitted rent statements showing the arrears due. The respondent was in breach of the tenancy condition regarding payment of rent. There was no appearance by the respondent at the case management discussion.
19. On the basis of the papers submitted and having regard to the oral submission of the agent for the applicant, we consider that we should make an order for the amended sum sued of £15,506.67.
20. We are not prepared to make any award of interest. The right to do so is discretionary to the tribunal, in this case as there is no obligation to pay interest set out in the tenancy agreement. We accept the argument put forward by the applicant's agent, that 4% is not unreasonable, the arrears are significant, and the present economic climate is challenging. However, balanced against those arguments, we take the view that interest provisions could be included in the tenancy agreement and the applicants are a large and experienced organisation and they have not contracted to seek interest. We also consider that as an experienced organisation they could have taken action against the respondent before the arrears reached this high sum. We consider that the present economic climate is very challenging for many people and in this case we consider that it may be very challenging for the respondent, as we were advised by the agent that he is a man in his 70s and he recently served a custodial sentence. On the basis of this information, we consider that awarding interest on the sum due may be considerably more detrimental to the respondent than it will be to the applicants, and therefore we are not prepared to award interest in favour of the applicant on this occasion.

DECISION

21. The tribunal grants an order in favour of the Applicant for FIFTEEN THOUSAND FIVE HUNDRED AND SIX POUNDS AND SIXTY SEVEN PENCE (£15,506.67) 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

15th August 2023

Legal Member/Chair

Date