



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/23/0437

Re: Property at 61 Malcolm Road, Glenrothes, Fife, KY7 4JU (“the Property”)

Parties:

Mr Richard Spence, 103 Alexander Avenue, Largs, Ayrshire, KA30 9EY (“the Applicant”)

Mr Danny Downie, 74 Garry Park, Glenraig, Lochgelly, KY5 8AG (“the Respondent”)

Tribunal Members:

Anne Mathie (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 in the sum of £2873.40 with 3% interest from today’s date be made

Background

1. An application was submitted dated 10 February 2023 in terms of Rule 111 of the Chamber Rules for a payment order for rent arrears in the sum of £2473.40 plus 3% interest. Along with the application form, the Applicant’s agents lodged the following documents:
 - Schedule of rent payments
 - Tenancy agreement
 - Paper apart
2. The Tribunal wrote to the Applicant’s agents on 7 March 2023 asking why there was a discrepancy between the rent stated in the tenancy agreement and the rent stated in the rent statement. The Tribunal also requested a rent statement that showed rent due, rent paid and a running total of rent arrears.

3. The Applicant's agents responded by email dated 14 March 2023 in the following terms:

"Rent is £400 pcm, the letting agency and Respondent entered into a temporary arrangement whereby the tenant would pay £425pcm with the additional £25 being paid towards the deposit, the Respondent reneged on this agreement. Despite the written terms of the tenancy agreement the Applicant seeks to recover arrears as per monthly rent of £400 pcm."

Please see the attached rent statement showing arrears of £2873.40. This highlights an error in our original application. To provide an explanation, the original rent statement omitted the period 27.04.2022-26.04.2022 and showed rent arrears were £2473.40. This has been corrected in the attached statement and updated Form E."

4. An updated application and rent statement were lodged.
5. The application was accepted and assigned to a case management discussion today. Copies of the application and papers and notification of the case management discussion were served on all parties. The Respondent was advised that he was required to submit any written representations by 16 May 2023.
6. In the notification letters to the Respondents he was advised:
"The tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision on the application which may involve making or refusing a payment order. If you do not take part in the case management discussion, this will not stop a decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair."
7. No written representations have been received from the Respondent.

The Case Management Discussion

8. The case management discussion took place today by teleconference. John McKeown, trainee solicitor, of Jackson Boyd Lawyers attended on behalf of the Applicant. There was no attendance by or on behalf of the Respondent. Mr McKeown asked the Tribunal to grant the payment order in the sum of £2873.40 in respect of the application. As regards interest, he confirmed that there was no contractual right to interest and he was requesting that the Tribunal use its discretion to grant interest at the rate of 3% per annum from the date of the decision, noting the request for interest to be awarded from the date of service as stated on the application form was incorrect. There had been discussions between parties in relation to repayment of the arrears but these had not proved fruitful and the last contact with the Respondent had been in February 2023 necessitating the Tribunal application. He advised that he was unaware of any further payments being made by the Respondent towards the deposit other than the payments listed on the rent schedule.

Findings in Fact

9. The Tribunal made the following findings in fact:

- The parties entered into a private residential tenancy agreement from 27 November 2020 to 1 June 2022;
- In respect of the tenancy agreement rent was due to be paid in the sum of £400 per calendar month (this is despite the tenancy agreement stating rent to be £425 per calendar month as £25 of this was due to go towards paying the deposit);
- The Respondent had fallen into arrears of rent in the sum of £2873.40.

Reasons for Decision

10. The Tribunal took into account of all the written evidence and written submissions before it and the oral submissions of the Applicant's agent today. There was nothing challenging the information before the Tribunal. The Tribunal exercised its discretion in terms of Chamber Rule 41A and awarded 3% interest from the date of its decision.

Decision

11. The Tribunal determined that a payment order in respect of rent arrears in the sum of £2873.40 with interest at the rate of 3% today's date be made.

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.

Anne Mathie

2 June 2023

Legal Member/Chair

Date

Anne Mathie