



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/22/2980

Re: Property at 232 Headland Court, Aberdeen, AB10 7GZ (“the Property”)

Parties:

Mr Richard Scott Miller and Mrs Pamela Miller, Hillcroft, Bograxie, Inverurie, Aberdeenshire, AB51 5LD per their agent Mr John Mckeown, Solicitor, Jackson Boyd Solicitors (“the applicants”)

Mr Frank Ainsworth, whose current whereabouts are unknown to the tribunal (“the respondent”)

Tribunal Members:

David Preston (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the applicants are entitled to an order for the sum of THREE HUNDRED AND EIGHTY FOUR POUNDS SIXTY SIX PENCE (£384.66) as arrears of rent under the tenancy agreement between the parties together with interest at the rate of 8% per annum from the date hereof until paid.

Background

1. By application dated 22 August 2022 the applicants applied to the First-tier Tribunal under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the rules”) for an order for payment of arrears of rent due under the tenancy agreement between the parties together with interest at the rate of 8% from the date of decision by the tribunal until paid.
2. The tribunal considered the following papers: Short Assured Tenancy Agreement dated 20 & 21 October 2016; Rent Statements up to September 2021; email from the respondent to Emma Hartley dated 1 June 2022; email from SafeDeposits Scotland to Stonehouse Lettings dated 18 March 2022; email dated 16 January 2023 from applicant’s agent together with amended application and rent statement; Certificate of Service by Advertisement.

3. By Notice of Acceptance dated 26 October 2022 a legal member of the tribunal having delegated authority so to do referred the application to the tribunal for a Case Management Discussion (“CMD”).

The Case Management Discussion

4. Mr John McKeown participated by telephone on behalf of the applicants. The respondent was neither present nor represented.
5. The tribunal noted the Certificate of Service by Advertisement, in terms of which the details of the application had been provided in an advertisement which appeared on the First-tier for Scotland Housing and Property Chamber website from 13 December 2022 until 31 January 2023.
6. The tribunal was satisfied that the application had been duly served by advertisement and that the respondent had waived his right to be present or represented and it was content to proceed in his absence.
7. The application to the tribunal sought an order for payment against the respondent in the sum of £384.66 together with interest at the rate of 8% per annum from the date of the tribunal’s decision until paid. The rent statement showed that the arrears up to September 2021 amounted to £384.66.
8. By email dated 16 January 2023 the applicants sought to increase the amount of arrears to £834.66. The applicants submitted that the increase arose from an error on the part of Stonehouse Lettings, their letting agents, who had failed to recover the amount of the deposit which had been lodged with them. SafeDeposits Scotland had paid the deposit to the respondent on 9 September 2021.

Discussion

9. The tribunal sought to clarify the situation regarding the deposit.
10. Mr McKeown explained that as per the email from SafeDeposits Scotland dated 18 March 2022 the respondent had applied for the deposit on 25 July 2021. The applicants’ letting agents had failed to respond to SafeDeposits Scotland and they had accordingly repaid the deposit in full to the respondent on 9 September 2021. As explained in the original application the applicants had then been able to recover the amount of the deposit (£450) from the letting agents.
11. Mr McKeown submitted that the respondent was obliged to make payment in terms of section 4 of the tenancy agreement and the obligation arose notwithstanding any payment the applicants had received from the letting agents and accordingly they sought to recover the full arrears amounting to £834.66.
12. After discussion, Mr McKeown agreed with the tribunal that the deposit had been paid by the respondent in security for his obligations under the tenancy agreement and that the applicants had recovered the amount of the deposit which covered

arrears of rent in full or in part. The fact that they had been paid this amount by the letting agents as a result of their error was immaterial.

13. Mr Mckeown referred the tribunal to clause 4 of the tenancy agreement which provided that interest was due by the respondent on rent over to at the rate of 5% per annum above Base Lending Rate of the Bank of Scotland. He understood that the base rate was currently 3.5% but confirmed that the applicant sought interest at 8%.

Findings in Fact

14. The parties entered into a short assured tenancy agreement dated 20 & 21 September 2016. The respondent vacated the property on 19 September 2021.
15. The rent contractually due was £450 per calendar month. Rent had been paid until 1 July 2021 leaving arrears of £834.66.
16. The applicants had recovered the amount of the deposit (£450) to cover part of the arrears leaving £384.66 outstanding.
17. In terms of clause 4 of the Short Assured Tenancy, interest was contractually due to the applicant at the rate of 8.5% per annum but the application sought interest at the rate of 8% per annum.

Reasons for Decision

18. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 states that the tribunal may do anything at a Case Management Discussion which it may do at a hearing, including making a decision. The tribunal decided that, on the basis of the information presented to it, to determine the application at the Case Management Discussion.
19. The tribunal is satisfied that at the date of the CMD arrears of rent totalling £384.66 remained outstanding and that the respondent is contractually obliged to pay interest thereon as sought in the application at the rate of 8% per annum from the date of this decision until paid.

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.

David Preston

31 January 2023