



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/23/1089

Re: Property at 47 Petrel Way, Dunfermline, KY11 8GY (“the Property”)

Parties:

Mr Connor Auld and Mrs Kelly Auld, 11 Cressbrook Street, Clinton, Queensland, 4680, Australia (“the Applicants”)

Mr Craig Dobbie, previously residing at 47 Petrel Way, Dunfermline, KY11 8GY and whose current whereabouts are unknown. (“the Respondent”)

Tribunal Member:

Shirley Evans (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment against the Respondent in favour of the Applicant in the sum of EIGHT THOUSAND FIVE HUNDRED AND FIFTY POUNDS (£8550) STERLING with interest at the rate of 7% per annum from the date of decision to payment. The order for payment will be issued to the Applicants after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.

Background

- 1. This is an action for recovery of rent arrears of £6650 with interest raised in terms of Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).**
- 2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Respondent and Northwood Dundee Limited dated 7 May 2020, a Guaranteed Rent Agreement between the Applicants and**

Northwood Dundee Limited dated 20 and 21 February 2020, a Guaranteed Rent Agreement between the Applicants and Northwood Dundee Limited dated 3 and 6 December 2021, an Assignment of the Private Residential Tenancy Agreement in favour of the Applicants dated 7 and 14 June 2022, a Sheriff Officer's trace report dated 15 February 2023 and a rent statement to 8 March 2023.

3. The Applicant's solicitor advised the Tribunal that he had conducted a Sheriff Officers' trace to ascertain the Respondent's current whereabouts. The trace dated 15 February 2023 reported that the Respondent was still resident at the Property. However, the Applicants have strong reason to believe that the address has been abandoned. Their solicitor requested that the application be served on the Respondent by way of advertisement and submitted an application for service by advertisement. Accordingly, the application was served on the Respondent by advertisement in terms of Rule 6A of the Regulations. The Execution of Service was received by the Tribunal.
4. The Applicant's solicitor submitted an application to increase the sum sought to £8550 on 30 May 2023 and enclosed a rent statement to 8 May 2023. He intimated a copy of the application with the rent statement to the Respondent.

Case Management Discussion

5. The Tribunal proceeded with a Case Management Discussion on 12 June 2023 by way of teleconference. The Applicant was represented by Mr Jarvie, from Bannatyne, Kirkwood and France, solicitors. The Respondent was not present or represented despite the Tribunal starting 5 minutes late to allow the Respondent time to join. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded in her absence.
6. The Tribunal had before it the copy of the Private Residential Tenancy Agreement between the Respondent and Northwood Dundee Limited dated 7 May 2020, the Guaranteed Rent Agreements between the Applicants and Northwood Dundee Limited, the Assignment of the Private Residential Tenancy Agreement in favour of the Applicants, the Sheriff Officer's trace report dated 15 February 2023 and the rent statement to 8 May 2023. The Tribunal considered these documents.
7. Mr Jarvie moved the Tribunal to grant an order for repayment of arrears of £8550 with interest in terms of the application to amend. The Tribunal noted that in terms of Clause 8 of the tenancy agreement the monthly rent was £950. With reference to the rent statement lodged the Tribunal noted the arrears to 8 May 2023 were £8550 and that the last payment was made on 15 August 2023. Mr Jarvie confirmed no other payments had been made.

8. Mr Jarvie also sought interest at 3% over the base rate of 4% and asked the Tribunal to use its discretion to award interest despite the tenancy agreement not providing for interest.

Findings In Fact

9. The Applicants are the heritable proprietors of the Property. They entered into a Rent Guarantee Agreement with Northwood Dundee Limited on 20 and 21 February 2020 which allowed Northwood to lease the Property. Northwood Dundee Limited then entered into a Private Residential Tenancy Agreement with the Respondent on 7 May 2020.
10. The Respondent agreed by way of Clause 8 of a Private Residential Tenancy Agreement that he would pay a monthly rent for the Property of £950.
11. In terms of an Assignment dated 7 and 14 June 2022 Northwood Dundee assigned their interest in the tenancy agreement to the Applicants.
12. The Respondent has fallen into arrears of rent and is in breach of Clause 8 of the tenancy agreement. The last payment was on 15 August 2022. No further payments have been made.
13. Arrears to 8 May 2023 are £8550.

Reasons for Decision

14. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the submissions made by Mr Jarvie.
15. The Tribunal noted the terms of the rent guarantee agreement, tenancy agreement, assignment in favour of the Applicants and the rent statements lodged which set out how the arrears had arisen. The Applicants had produced evidence of persistent non-payment of rent. The Respondent had not disputed the application. The Tribunal was satisfied on the basis of the documents lodged, together with Mr Jarvie's submissions that an order for payment in favour of the Applicants be granted for the amount in the amended sum claimed of £8550.
16. Further the Tribunal was satisfied that interest be awarded at the rate of 7% per annum from the date of the decision in terms of Rule 41A.

Decision

17. The Tribunal granted an order for payment of £8850 with interest at 7% per annum.

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.

S Evans

12 June 2023

Legal Chair

Date