



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/19/2460

Re : Property at Huntly House, 11 East Burnside, Dollar, Clackmannanshire FK14 7AT (“the Property”)

The Parties:-

(1) Roger Page, 60 South Road, Oundle, Peterborough PE8 4BP, Cambridgeshire (“the First Applicant”)

(1) Alison Page, 60 South Road, Oundle, Peterborough PE8 4BP, Cambridgeshire (“the Second Applicant”)

Both represented by Craig Chisholm, Clarity Simplicity Ltd, solicitors, 8 Regwood Street, Glasgow G41 3JG

(1) Lisa Katz, residing at 5 Dollarbeg Park, Dollar, Clackmannanshire FK14 7LJ (“the First Respondent”)

(2) Gareth Katz, residing at 5 Dollarbeg Park, Dollar, Clackmannanshire FK14 7LJ (“the Second Respondent”)

The Tribunal comprised:-

Mr David Bartos - Legal member and Chairperson

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the First and Second Respondents jointly and severally shall pay to the Applicants the sum of FIVE THOUSAND THREE HUNDRED AND FIFTY POUNDS (£5350.00) STERLING together with interest thereon at the rate of four per centum (4%) per annum from 2 October 2019 until payment.

Background

1. In October 2018 the parties entered into a private residential tenancy of the Property with the Applicants as landlord and the Respondents as tenants. The Applicants seek an order for payment of rent by the Respondents.
2. On 2 October 2019 the Tribunal had a case management discussion ("CMD") at 11.30 a.m. at Wallace House, Maxwell Place, Stirling FK8 1JU. The Applicants were represented by Craig Chisholm of Clarity Simplicity, solicitors, at the CMD. There was no appearance by or on behalf of the Respondents. The Tribunal noted that Notice of the CMD at to-day's date had been given to the Respondents in letters from the Tribunal dated 28 August 2019 which had been served on them by sheriff officer on 30 August 2019 as per his certificates of citation of the same date. No written representations had been received by the Tribunal from the Respondents. The Tribunal confirmed that no contact with the Tribunal Office had been made by the Respondents immediately before the commencement of the CMD. The Tribunal proceeded with the CMD. It took the view that in all the circumstances it was not unfair to the Respondents to proceed with the CMD and that it would be unfair to the Applicants for there to be delay.

3. *Facts Not in Dispute Between the Parties*

- (a) On 26 October 2018 the Applicants entered into a written private residential tenancy of the Property to the Respondents ("the Lease"). The Lease commenced on 27 October 2017 and was under the Private Housing (Tenancies) (Scotland) Act 2016.
- (b) The Lease provided for the payment by the Respondents to the Applicants of rent of £1950 per month payable jointly and severally in advance on the 1st day of each month. The Lease has continued in force.
- (c) The Respondents have paid none of the full rent due in March 2019 to May 2019 and only £500 in respect of the rent due in July 2019.
- (d) The total amount of rent due and unpaid up to 2 July 2019 was £7300 as per the Applicants' statement of rent due and arrears up to the period ending 1 July 2019
- (e) On 6 August 2019 the Applicant applied to the Tribunal for an order for payment of the sum of £7300.
- (f) The Respondents paid £1950 in respect of the deposit under the Lease. This was lodged with Safe Deposits Scotland. On 18 September 2019 Safe Deposits Scotland informed the Applicants that the deposit was being released to the Applicants given the non-objection by the Respondents to its release. The Applicants have since received the deposited sum from Safe

Deposits Scotland. They have applied it to reduced the arrears of rent by £1950.

(g) The sum of £5350 remains due and unpaid.

Oral Evidence and Submission

4. At the CMD the Applicants' representative confirmed that no contact had been made by the Respondents to the Applicants following the making of the application. Nor had the Applicants been able to obtain a response from the Respondents. No further payments had been made by the Respondents.
5. He noted that since the making of the application the Applicants had received payment of the deposit of £1950 from Safe Deposits Scotland. He showed the Tribunal an e-mail from Safe Deposits Scotland to the Applicant dated 18 September 2019 confirming its release in the absence of any objection thereto by the Respondents. He also showed the Tribunal a subsequent e-mail from the First Applicant confirming that the £1950 had been received.
6. He submitted that no defence had been stated and that making allowance for the application of the deposit for rent arrears that the Tribunal should grant an order for payment of £5350 without continuation to a hearing.

Reasons

7. The Tribunal considered the application, the submission and the further documentary evidence submitted by the Applicant's representative. It found that it was able to make sufficient findings in fact and that to do so was not contrary to the interests of the parties. It was therefore able to decide the case at the CMD without a hearing. It could see no benefit to be gained from a further hearing which would cause delay.
8. The Tribunal was satisfied that no doubt was cast on the documentary material and evidence provided by the Applicants. On that basis the Tribunal made the findings in fact set out above.
9. The Tribunal accepted that there had been a breach by the Respondents of their duty to pay the rent under the Lease and that the amount sought remained due. In the circumstances the Tribunal awarded the Applicants the sum of rent sought by their representative.
10. The Applicants' representative also sought interest on the outstanding amount at the rate of 8% per annum. He did so on the sole basis that this was the rate awarded by the sheriff court. The Lease did not provide for interest. The Tribunal noted that this rate had existed for over 20 years and had been fixed at a time when interest rates were significantly higher than at present. It noted also that it was not bound by the court (judicial) rate. The Applicants' representative suggested 4% per annum as a fall-back position. The Tribunal

found this to be a not unreasonable rate as compensation for the Applicants being put out of the rent and awarded interest at that rate from the date of its decision.

Outcome

11. The First-tier Tribunal for Scotland (Housing and Property Chamber) orders the Respondents jointly and severally to pay to the Applicants the sum of One Thousand Six Hundred Pounds (£5350.00) Sterling together with interest thereon at the rate of four per centum per annum from 2 October 2019 until payment.

Right of Appeal

12. In terms of section 46 of the Tribunals (Scotland) Act 2014 a party aggrieved by the decision of the Tribunal may seek to 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.

NOTE: This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to tribunal members in relation to any future proceedings on unresolved issues.

D.B

Legal Member

2 October 2019

Date