



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/20/2272

Re: Property at 189 Netherton Road, Wishaw, ML2 0BS (“the Property”)

Parties:

Mr Ebenezer Phillips, Mrs Eugena Phillips, 40 Phoenix Road, Lordswood, Chatham, ME5 8TB (“the Applicants”)

Mr Gary Hugh Maxwell, Mr Hugh Maxwell, Ms Natalie Kilmurray, Unknown, Unknown (“the Respondents”)

Tribunal Members:

Graham Harding (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicants were entitled to an order for payment by the Respondents jointly and severally to the Applicants in the sum of £2534.36.

Background

1. By application dated 28 October 2020 the Applicants applied to the Tribunal for an order in respect of alleged rent arrears, interest, locksmith charges, Sheriff Officers fees and the cost of repairs to the property arising from the First and Third Respondents’ tenancy of the property. The Applicants submitted copies of earlier decisions and orders of the Tribunal in respect of the property and parties together with invoices and a breakdown of the sums claimed. The Applicants also submitted a copy of the tenancy agreement.
2. By Notice of Acceptance dated 4 December 2020 a legal member of the Tribunal accepted the application and a Case Management Discussion was assigned.

3. A Case Management Discussion assigned for 20 January 2021 was adjourned as Sheriff Officers were unable to serve the case papers on the Respondents.
4. A further Case Management Discussion was assigned and intimation was given to the Respondents by way of Service by Advertisement on the Housing and Property Chamber website.

The Case Management Discussion

5. A Case Management Discussion was held by teleconference on 8 February 2021. The Applicants attended personally. There was no attendance by the Respondents. The Tribunal noted the terms of the Certificate of Advertisement dated 8 February 2021 and being satisfied that the certificate was valid proceeded in the absence of the Respondents.
6. The Tribunal noted that although the Applicants had referred to rent being due for the period from 17 May 2020 to 2 October 2020 the tenancy had been terminated by the previous Tribunal's decision in Case Reference FTS/HPC/EV/20/1008 on 6 September 2020 therefore any sums due by the Respondents after that date would more properly be assessed as violent profits rather than rent although the total amount due would be the same as the sum claimed namely £2467.65.
7. The Tribunal queried the basis on which the Applicants were seeking interest on the sum claimed. The Applicants suggested that the tenancy agreement made provision for interest on unpaid rent but on an examination of the tenancy agreement there did not appear to be an interest clause. The Applicants then suggested that the sum due amounted to a commercial debt and would therefore attract interest.
8. The Applicants explained that following obtaining an order for the eviction of the Respondents from the property they had remained in occupation and it had been necessary to instruct Sheriff Officers to carry out an eviction. This had also involved instructing a locksmith. The Applicants referred the Tribunal to the invoices from James S Orr, Sheriff Officers dated 12 October 2020 in the sums of £238.73 and £152.98 and the invoice from 1st Class Locksmith & Security dated 2 October 2020 in the sum of £75.00.
9. The Applicants advised the Tribunal that they had incurred a charge of £500.00 to Home Dynamic Services in respect of the cost of cleaning and carrying out repairs to the property following the removal of the Respondents and referred the Tribunal to the invoice dated 5 October 2020.
10. The Applicants confirmed that the First and Third Respondents were the tenants in terms of the Tenancy Agreement and the Second Respondent was a guarantor for the debts due by the First and Third Respondents and referred the Tribunal to the terms of the Private Residential Tenancy Agreement entered into by the parties.

11. The Applicants confirmed that the Respondents' deposit of £900.00 lodged with Safe Deposits Scotland had been paid in full to the Applicants at the end of the tenancy.
12. The Applicants made reference to a possible further claim for £100.00 in respect of a charge for installing a new electric meter at the property but indicated they did not wish to amend their claim as they hoped this would be dealt with by the Energy Ombudsman. The Applicants sought an order for payment in the sum of £2625.22 being the amount claimed in the letter of 27 October 2020 addressed to the Tribunal.

Findings in Fact

13. The parties entered into a Private Residential Tenancy Agreement that commenced on 17 June 2019 at a rent of £450.00 per month.
14. The Tenancy was terminated on 6 September 2020.
15. The First and Third Respondents remained in occupation of the property until they were evicted by Sheriff Officers on 2 October 2020.
16. The Second Respondent acted as guarantor for the liabilities of the First and Third Respondents in respect of the said Private Residential Tenancy Agreement.
17. The First and Third Respondents accrued rent arrears and debt in respect of violent profits for the period from 17 May 2020 to 2 October 2020 amounting to £2467.65.
18. The Applicants incurred costs of 75.00 in respect of locksmith charges for gaining entry and replacing the locks at the property.
19. The Applicants incurred Sheriff Officers fees in the sum of £391.71 in respect of serving a charge for removing and carrying out the eviction of the First and Third Respondents.
20. The Applicants incurred a charge of £500.00 in respect of the cost of cleaning and carrying out repairs to the property following the eviction of the First and Third Respondents from the property.
21. The Respondents deposit of £900.00 was paid to the Applicants by Safe Deposit Scotland following the end of the tenancy.

Reasons for Decision

22. The Tribunal was satisfied that the sum claimed by the Applicants in respect of rent for the period from 17 May 2020 to 2 October 2020 although in reality a combination of rent and violent profits was correctly due by the Respondents as the First and Third Respondents had remained in the property until they were evicted on 2 October 2020 notwithstanding the decision of the Tribunal in case reference FTS/HPC/EV/1008.
23. The Tribunal was also satisfied that the Second Respondent was liable as guarantor for the First and Third Respondents debts in respect of their obligations under the Private Residential Tenancy Agreement.
24. The Tribunal was satisfied that the Applicants had incurred Sheriff Officers fees amounting to £391.71 and locksmith charges of £75.00 as a result of it being necessary to instruct the eviction of the First and Third Respondents.
25. The Tribunal was satisfied that the Applicants had incurred a cost of £500.00 in respect of cleaning and repairs to the property following the removal of the First and Third Respondents.
26. The Tribunal did not accept that there was a contractual obligation on the part of the Respondents to pay interest on the outstanding rent or that it was a commercial debt and refused the request for interest on this sum.
27. After taking account of the £900.00 deposit returned to the Applicants by Safe Deposits Scotland the Tribunal found that the Respondents were jointly and severally liable to pay the Applicants the sum of £2534.36.

Decision

28. Having considered the written representations and documents submitted together with the Applicants' oral submissions and being satisfied it had sufficient information before it to make a decision the Tribunal found the Respondents jointly and severally liable to the Applicants in the sum of £2534.36.

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.

G Harding

Graham Harding
Legal Member/Chair

8 February 2021
Date