



Decision on a Case Management Discussion 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/19/2180

Re: Property at 7B Balloch View, Cumbernauld, G67 1HF (“the Property”)

Parties:

Mrs Carol Forrest, 3 Queen Street, Fallin, Stirling, FK7 7JG (“the Applicant”)

Miss Jodie Finnigan, 7B Balloch View, Cumbernauld, G67 1HF; and Mr Robert Cowan Finnigan, 17 Cheviot Way, Bourtreehill, Irvine, Ayrshire, KA11 1JU jointly and severally (“the Respondents”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 111 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for payment of the sum of £3,850 in relation to rent arrears due by the Respondents jointly and severally with interest at the rate of 8% per annum from the date of the application.
2. The application contained:-
 - a copy of the tenancy agreement,
 - copy of the deed of guarantee,
 - rental statement,
 - letters dated 22 May 2019 from Your Move to Respondents, and
 - letter dated 5 April 2019 to second Respondent.

3. The Applicants' solicitor Mr Barr, from Messrs Jardine Donaldson appeared on behalf of the Applicant. There was no appearance by the Respondents.
4. Notice of the Hearing had been served on the Respondents by sheriff officers on 2 and 5 August 2019. As I was satisfied that the Respondents had been served with notice of today's hearing I was therefore prepared to proceed with today's hearing in their absence.

Hearing

5. The Applicants' agent referred me to the papers which had been lodged in support of the application, including the tenancy agreement, guarantor agreement and rent account statement.
6. This application related to unpaid rent due in terms of that agreement. The first Respondent had failed to make regular rental payments since November 2018. The second Respondent had also not paid the rent arrears. The Applicant's agent referred me to the rent account and advised that the current level of arrears were as set out in the rent account, namely £3,850.
7. The Applicant's agent referred me to the Deed of Guarantee, entered into between the Applicant and the second Respondent. He submitted that it provided that where the tenant breached a term of the tenancy then the Guarantor would indemnify the landlord from any loss. He submitted that this included unpaid rent. He submitted that the Deed of Guarantee also provided that the guarantor was jointly and severally liable for the debt.
8. The Applicants' agent advised that an order for eviction had been granted to recover possession of the property on 13 June 2019. The first Respondent had indicated that she was leaving the property, her last known address was 7B Balloch View, Cumbernauld.
9. The Applicant's agent submitted that the Applicant sought interest on the sum claimed. He advised that interest was not provided for in the tenancy agreement, however he referred me to rule 41A of the 2017 Tribunal Rules which allows the tribunal to include interest on an order for payment. He submitted that his client was entitled to seek it in terms of that rule, and for it to run from the date that any order was granted. He sought interest of 8% per annum, he submitted that this was reasonable as it was the judicial rate of interest which he would be entitled to in a court action. He acknowledged that I had discretion as to what rate of interest to include and if I was not prepared to award interest at the judicial rate, he submitted that 4% would be reasonable. He submitted that the purpose of interest was not to put the person back into the position he was in before, but it was so that the person who owed the money did not benefit from his actions. He submitted that not to award interest at the sum he was seeking would be an incentive to people to not pay their debts. It should not be seen as an interest free of loan. He did

not think that you would be able to obtain a loan with an interest rate as low as 4%. In all the circumstances he submitted that 4% interest would be a reasonable figure to include in any order granted.

Findings in Fact

10. The Tribunal found the following facts to be established:
11. A tenancy agreement was entered into between the Applicant and the first Respondent for the property. It commenced on 17 August 2018.
12. Clause 8 in the tenancy agreement provides that monthly rent was £550 and the rent payment date was 17th of each month. Clause 8 of the tenancy agreement provides that monthly rent was due in advance.
13. The rental statement showed amounts due each month, amounts received, and total rent outstanding.
14. That the rental statement showed total rent arrears outstanding as at as at 17 June 2019 being £3850.
15. It appeared that there had been no payments towards the rent arrears other than those shown on the rent statement.
16. That there was a deed of guarantee between the Applicant and Robert Cowan Finnigan, the second Respondent.
17. The deed of Guarantee had been signed by the second Respondent on 14 August 2018.
18. The deed of Guarantee set out that Robert Cowan Finnigan was the Guarantor.
19. The deed of Guarantee defined the tenant as Jodie Finnigan.
20. The deed of Guarantee defined the property as B7 Balloch View, Cumbernauld the premises to be let under the Private Residential Tenancy Agreement annexed to that deed.
21. The deed of Guarantee set out a definition of joint and several and included that each guarantor is jointly liable for the payment of all rent and all liabilities falling upon the tenants during the tenancy.
22. The deed of Guarantee stated that "... *The Guarantor hereby agrees to fully indemnify the landlord for any loss, damage, costs or other expenses arising either directly or indirectly out of any breach of the Tenancy Agreement by the Tenant or any person acting on his behalf.*"

Reasons for Decision

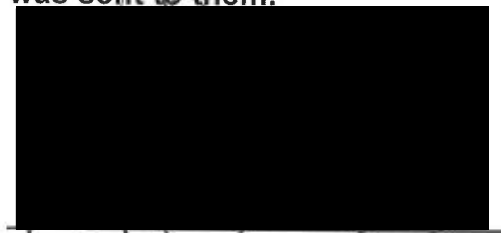
23. Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 provides that the First Tier Tribunal has jurisdiction in relation to civil proceedings arising from private residential tenancies.
24. As this tenancy is a private residential tenancy I am content that I have jurisdiction to deal with this case.
25. There was no response or appearance from the Respondents but they had been notified of today's hearing.
26. The tenancy agreement created obligations between the parties, one of those obligations was to pay rent, and the first Respondent has failed to do so.
27. The deed of Guarantee provided that the second Respondent would guarantee to indemnify the landlord for any loss, this included rent. It also set out that the guarantor would be jointly and severally liable for payment of rent and other liabilities. He had been requested to make payment of the outstanding rent. He had failed to do so.
28. There had been submitted with the application copies of letters sent to both Respondents, and so both Respondents were aware of the outstanding debt and payment from both of them had been requested.
29. There was submitted a rental statement showing the arrears due and additional information provided today by the Applicant's agent was that the sum was still outstanding.
30. In relation to the interest sought. I am prepared to make an order for interest however not at the rate of 8% as I do not consider that it would be just to do so. Rule 41 A of the 2017 Tribunal Rules provides that the first tier tribunal "may" include interest when making an order and accordingly, I consider that I have discretion in making any award of interest. I require having regard to the overriding objective of the first tier tribunal as set out in Rule 2 of the 2017 Tribunal Rules, and that is to deal with these proceedings justly. I am persuaded that it would be just to award interest, as I agree that the landlord has suffered loss in not having rent paid to her. I also agree that the Respondents should not benefit from the non-payment of a debt. It would appear to me to be reasonable in this case, having regard to the sum sought, the papers before me, and the submission made by the Applicant's agent, to award interest at a rate of 4% against the Respondents.
31. On the basis of the evidence submitted and having regard to all papers submitted including the application, I consider that I should make an order for the sum sued for and award interest at a rate of 4% per annum.

Decision

32. I grant an order in favour of the Applicant for THREE THOUSAND EIGHT HUNDRED AND FIFTY POUNDS (£3,850) STERLING against the Respondents jointly and severally together with interest at the rate of 4% per annum from the date of the order.

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.



Legal Member/Chair

S. 9. 18

Date