

Housing and Property Chamber
First-tier Tribunal for Scotland



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/20/0168

Re: Property at 27 Glenclova Terrace, Dundee, DD3 8DP (“the Property”)

Parties:

Mr Mark O'Rourke, Mrs Fiona O'Rourke, 37 Bruce Road, Dundee, DD3 8LJ (“the Applicants”)

Miss Catherine Jeffrey, Miss Marie Kerwin, Mr Alistair Gray, 4B Findale Street, Fintry, Dundee, DD4 9LD; 4B Findale Street, Fintry, Dundee, DD4 9LD; 9 Finavon Street, Dundee, DD4 9DU (“the Respondents”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision (in absence of the Respondents)

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

Background

This is an application for a payment order dated 15th January 2020 and brought in terms of Rule 70 (Application for civil proceedings in relation to an assured tenancy under the 1988 Act) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicants seek payment of arrears in rental payments of £714.86 in relation to the Property from the Respondents, and provided with their application copies of a short assured tenancy agreement between the Applicants as landlord and Miss Jeffrey and Mr Gray as tenant, a guarantee agreement between the Applicants as landlord and Miss Kerwin as guarantor, and a rent arrears statement.

The short assured tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

The Respondents have been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 10th February 2020, and the Tribunal was provided with the executions of service.

Case Management Discussion

A Case Management Discussion was held on 10th March 2020 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant did not appear, but was represented by Mr Wilkie, letting agent, who participated by telephone conference call. The Respondents did not appear, nor were they represented. The Respondents have not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal was invited by Mr Wilkie with reference to the application and papers to grant an order for payment of the sum of £714.86. He explained that the tenants had had left the Property on 12th August 2019, and had accumulated arrears of rent in the sum of £714.86 as shown on the rent arrears statement provided.

Statement of Reasons

Section 16 of the *Housing (Scotland) Act 2014* provides as follows:

“16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3) Part 1 of schedule 1 makes minor and consequential amendments.”

Accordingly, the Tribunal now has jurisdiction in relation to claims by a landlord (such as the Applicants) for payment of unpaid rental against a tenant and a guarantor (such as the Respondents) under a short assured tenancy and guarantee agreement such as these.

The Tribunal considered the terms of the short assured tenancy agreement, the guarantee agreement, the copy rent arrears statement, and Mr Wilkie's submissions, and was satisfied that this disclosed an outstanding balance due by the Respondents jointly and severally to the Applicants in respect of rent arrears to 12th August 2019 of £714.86.

Decision

In these circumstances, the Tribunal will make an order for payment by the Respondents jointly and severally to the Applicants of the sum of £714.86.

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.

Mr N Kinnear

10 March 2020

Legal Member/Chair

Date