



**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/23/2638**

**Re: Property at 20 Flat 3 Nether Abby Apartments, Dirleton Avenue, North Berwick, EH39 4BQ (“the Property”)**

**Parties:**

**Andrew Douglas and Catriona Douglas, 77 Ravelston Dykes, Edinburgh, EH12 6HA (“the Applicants”)**

**Angela Meynell, 20 Flat 3 Nether Abby Apartments, Dirleton Avenue, North Berwick, EH39 4BQ (“the Respondent”)**

**Tribunal Members:**

**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 Applicants in the sum of FIFTEEN THOUSAND THREE HUNDRED AND TWENTY-TWO POUNDS AND FIFTEEN PENCE (£15 322.15) STERLING with interest at 8% per annum from the date of this decision until 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, reasonable costs and interest 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 parties dated 4 February 2021 and starting 16 April 2021 and a rent statement to 7 July 2023 showing arrears of £7720.

3. On 22 August 2023 the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 12 October 2023 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 2 November 2023. The Tribunal advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 16 November 2023. This paperwork was served on the Respondent by Dale G Barrett, Sheriff Officer on 13 October 2023 and the Execution of Service was received by the Tribunal administration.
5. On 20 October 2023 the Applicants’ solicitors forwarded voluminous emails with the Respondent and her daughter and three notes of fees as vouching for the claim for reasonable costs. They also enclosed an up-to-date rent statement to 15 October 2023 and moved the Tribunal to amend the sum sought for rent arrears to £12 805. This correspondence was passed over to the Respondent.
6. The Respondent did not lodge any written representations by 2 November 2023.

### **Case Management Discussion**

7. The Tribunal proceeded with a CMD on 16 November 2023 by way of teleconference. David Gray from Messrs Gilston Gray, solicitors appeared on behalf of the Applicants. There was no appearance by or on behalf of the Respondent despite the teleconference starting 5 minutes late to allow the Respondent plenty of time to join. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in her absence.
8. The Tribunal had before it the Private Residential Tenancy Agreement between the parties starting 16 April 2021, an up-to-date rent statement to 15 October 2023 showing arrears of £12 805.00, three fee notes totalling £2,517.15 and various emails between Mr Gray and the Respondent and her daughter. The Tribunal considered these documents.
9. Mr Gray submitted that the Respondent had vacated the Property as of 14 November 2023 and was seeking arrears of rent in the increased sum of £12 805 to 15 October 2023. The Tribunal noted the rent statement lodged showed these rent arrears and that in terms of Clause 8 of the tenancy agreement the Respondent had agreed to pay rent of £1695 per month.
10. Mr Gray referred the Tribunal to Clause 8 of the tenancy agreement in relation to the Applicants’ claim for interest at 8% per annum. He submitted the claim for reasonable costs was a contractual claim and was not a claim in terms of Rule 40 of the Rules. In terms of Clause 8 of the tenancy agreement he

submitted the Respondent was liable for the payment of the reasonable costs incurred by the Applicants in relation to the Respondent's failure to pay rent on time including any expenses incurred by the Applicants in pursuing the Respondent for unpaid rent. The Tribunal noted the terms of Clause 8 so provided.

11. In support of his submission Mr Gray referred the Tribunal to three fee notes his firm had issued to the Applicants totalling £2517.15. He submitted that these all related to the work carried out on the matter in pursuing the Respondent for the payment of rent. He submitted with reference to the email correspondence that there was a huge amount of correspondence with the Respondent and her daughter. The fees issued had been restricted and for some distinct pieces of work there were fixed fees. All these flowed from the Respondent's failure to pay rent.

### **Findings In Fact**

12. The Applicants and the Respondent agreed by way of Clause 8 of a Private Residential Tenancy Agreement dated 4 February 2021 and commencing 16 April 2021 in relation to the Property that the Respondent would pay the Applicants a monthly rent for the Property of £1695. Further in terms of Clause 8 the parties agreed that interest of 8% per annum may be charged and that the Respondent would be held liable for the reasonable costs incurred by the Applicants through the Respondent's failure to pay rent.
13. The Respondent has fallen into arrears of rent of £12 805 to 15 October 2023 and is in breach of Clause 8 of the tenancy agreement.
14. The Applicants' agents have pursued the recovery of arrears from the Respondent on behalf of the Applicants. As a result, the Applicants have incurred legal fees of £2517.15. The fees incurred are reasonable costs in pursuing the Respondent. The Respondent is liable to meet these costs in terms of Clause 8 of the tenancy agreement.

### **Reasons for Decision**

15. 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 Gray.
16. The Tribunal noted the terms of the tenancy agreement and the rent statement lodged. The email correspondence showed that the Applicants' solicitors had attempted to resolve matters with the Respondent and had entered into correspondence with both the Respondent and her daughter. There was a clear contractual obligation on the Respondent to pay monthly rent of £1695. The correspondence and rent statement showed she had failed to do so. The Tribunal considered that the sum sought for rent arrears

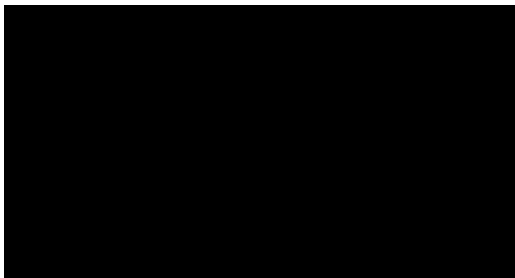
be increased to £12 805 and granted the motion to amend contained in the email of 20 October 2023 in terms of Rule 14A of the Regulations. There was also a clear obligation on the Respondent to pay the Applicants' reasonable costs for pursuing the arrears. The Tribunal had noted the contents of the three fee notes issued and considered that the fees were reasonable. The Tribunal accepted the submissions of Mr Gray that his firm had restricted the fees and had written off work in progress. The Tribunal accepted the Applicants were entitled to charge interest at 8% per annum in terms of the tenancy agreement. The Applicants had produced evidence of persistent non-payment of rent and the efforts made on their behalf to pursue these arrears. It appeared to the Tribunal that the submissions made on their behalf were strong. Further the Tribunal considered it was telling that the Respondent had not disputed the application. The Tribunal was satisfied that the order for payment in favour of the Applicants be granted.

### **Decision**

17. The Tribunal granted an order for payment of £15 322.15 with interest at 8% 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.



**Legal Member**

**16 November 2023**

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**Date**