



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) and Rule 70 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules)**

**Chamber Ref: FTS/HPC/CV/23/4165**

**Re: Property at Chapelhill Farmhouse, Glencaple, Dumfries, DG1 4QT (“the Property”)**

**Parties:**

**David John Pennell, Lady Clare Therese Kerr and Nigel Gordon Helm Draffan, the trustees acting under the will of the Rt Hon Mary Katherine Lady Herries of Terregles dated 20 February 2015, as varied by Deed of Appointment and Retirement of Trustees dated 29 June 2018 (The Trustees of of The Caerlaverock Fund), Lantonside, Glencaple, DG1 4RQ (“the Applicants”)**

**Mr Gary Gibson and Mrs Kelly Gibson, The Anchor Hotel, Kippford, Dalbeattie, DG5 4LN (“the Respondents”)**

**Tribunal Members:**

**Ms Susanne Tanner K.C. (Legal Member)**

**Decision (in absence of the Respondents)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that the Respondents should pay to the Applicants the sum of EIGHT THOUSAND ONE HUNDRED AND EIGHTY EIGHT POUNDS AND 52 PENCE (£8188.52) STERLING; and made an Order for Payment in respect of the said sum, with interest on that sum at the rate of five per cent above Bank of Scotland base rate from the date of this decision until payment.**

**Statement of Reasons**

1. On 21 November 2023, the Applicants’ Representative made an Application seeking payment of rent arrears of £8188.52 by the Respondents, together with interest from the date of any decision and order. Supporting evidence was

produced, including a private residential tenancy agreement, a rent statement and a will of the late Rt Hon Mary Katherine Lady Herries of Terregles.

2. Further information in relation to title to the Property and title to make the Application was requested from the Applicants' representative. Further information and an amended Application Form F paper apart was submitted with amended Applicant details.
3. On 24 January 2024, the Application was accepted for determination.
4. Service on the Respondents of the Application paperwork was by Sheriff Officers on 2 April 2024.
5. No written representations were submitted by the Respondents in advance of the CMD and they did not make any contact with the tribunal's administration.
6. A Case Management Discussion (CMD) took place on 2 May 2024 at 1400 by teleconference.
7. The Applicants' Representative, Ms Wooley attended the CMD on behalf of the Applicants.
8. The Respondents did not attend the CMD. They made no contact with the tribunal after service of the Application paperwork and did not state any defence to the Application.
9. The tribunal decided to proceed with the Application in the absence of the Respondents. The tribunal was satisfied that the requirements of rule 24(1) of the 2017 Rules regarding the giving of notice of a CMD had been duly complied with and proceeded with the Application upon the representations of the party present and all the material before it.
10. The tribunal heard from Ms Wooley in relation to the Application.
11. She sought a payment order for the principal sum of £8188.52; together with interest at the contractual rate in the tenancy agreement (five per cent above Bank of Scotland base rate) from the date of the decision until payment.
12. In relation to the title of the Applicant, she confirmed that it should be in the terms in the amended Application Form F paper apart, with reference to the supporting documents lodged.
13. Ms Wooley referred to the Short Assured tenancy Agreement and stated that the tenancy started on 29 September 2017. She said that the management of the tenancy was taken over by a new company in September 2021. She referred to the rent statement lodged with the Application for the period from 1

September 2021 to 30 September 2023. She stated that the end date of the tenancy was 2 December 2022. The only payments made by the Respondents between September 2021 and 2 December 2022 were £675.00 in November 2021 and £675.00 in June 2022. All other invoices, as shown on the rent statement for the period remain unpaid. The Applicants have sent correspondence to the Respondents about rent and there has been no response. The Applicants took legal advice in 2023 and thereafter made this Application.

14. In relation to the claim for interest, Ms Wooley submitted that interest should be awarded at the contractual rate in the tenancy agreement, clause 2.1(c), which provides: *“The Respondents are liable in terms of Clause 2.1(c) of the tenancy agreement to pay interest on any sums due under the lease and not paid on the due date at the rate of five percentage points above the base rate from time to time in force of Bank of Scotland from the due date until paid.”* Although the contractual entitlement is from the date sums fall due, the Application seeks interest from the date of the decision. Ms Wooley confirmed that she was seeking interest from the date of the decision at the contractual rate.

15. There was no defence to the Application.

### **Findings-in-Fact**

16. The Applicants are the trustees of The Caerlaverock Fund, Lantonside, Glencaple, DG1 4RQ, which was established in terms of the will of the late Rt Hon Mary Katherine Herries of Terregles.

17. The landlord of the Property during the Respondents' tenancy was one of the Trustees of the Caerlaverock Fund.

18. In terms of a Short Assured Tenancy agreement between the parties in respect of the Property, the start date of the tenancy was 29 September 2017.

19. Rent was payable by the Respondents to the Applicants from the start of the tenancy at the rate of £675.00 per calendar month in advance.

20. The tenancy ended on 2 December 2022.

21. The rent arrears as at 2 December 2022 amounted to £8188.52

22. The Respondents have not responded to correspondence from the Applicants or the Applicants' representative in relation to rent arrears.

23. The Respondents have not made any payment towards the rent arrears following the end of the tenancy and the rent arrears as at 2 May 2024 amount to £8188.52.

### **Findings in fact and law**

24. The Respondents are liable in terms of Clause 2.1(c) of the tenancy agreement to pay interest on any sums due under the lease and not paid on the due date at the rate of five percentage points above the base rate from time to time in force of Bank of Scotland from the due date until paid.

### **Discussion**

25. As the tribunal was satisfied that the Respondents owe £8188.52 to the Applicants by way of rent arrears for the tenancy of the Property in the period to 2 December 2022, the tribunal made an Order for Payment of that sum.

26. In addition, the tribunal considered the application for interest. Having regard to the Applicants' contractual entitlement to interest on sums due under the lease, and given that the Application seeks interest from the date of the decision, I was satisfied that interest should be awarded on the principal sum at the rate of five per cent above the Bank of Scotland base rate, from the date of the decision and order, namely 2 May 2024 until payment, and made a payment order on that basis.

### **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.**

# **S Tanner**

**Ms Susanne Tanner K.C.  
Legal Member/Chair**

**2 May 2024**