



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/23/4642

Re: Property at Flat 1, 4 Achray Avenue, Alexandria, G83 0QB (“the Property”)

Parties:

Ms Eileen McSkimming, Mr John Peters, 26 Woodbank Gardens, Alexandria, G83 0SW (“the Applicant”)

Mr Paul Evans, Flat 1, 4 Achray Avenue, Alexandria, G83 0QB and Mr Derek Evans, 11 Park Avenue, Alexandria, West Dunbartonshire, G83 8JR (“the Respondents”)

Tribunal Members:

Shirley Evans (Legal Member) and Leslie Forrest (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment against the Respondents in favour of the Applicants in the sum of SIX THOUSAND TWO HUNDRED AND FORTY-FIVE POUNDS (£6245) STERLING with interest from the date of the Order at 8% per annum 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 Respondents.

Background

- 1. This is an action for rent arrears and interest raised in terms of Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”). The action is raised against the tenant Mr Paul Evans and the guarantor Mr Derek Evans.**

2. The application was accompanied by a Private Residential Tenancy Agreement between the parties dated 30 December 2021, a rent statement, emails dated 10 March, 17 March, 10 May and 13 June 2023 to Paul Evans, the tenant
3. On 26 February 2024, the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 13 May 2024 the Tribunal enclosed a copy of the application and invited the Respondents to make written representations to the application by 3 June 2024. The Tribunal advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 18 June 2024. This paperwork was served on the Respondent by Paul Miller, Sheriff Officer, Glasgow on 16 May 2024 and the Execution of Service was received by the Tribunal administration.
5. The Respondent did not lodge any written representations by 3 June 2024.
6. On 3 June 2024 in response to a Notice of Direction issued by the Tribunal the Applicants’ agent forwarded an up to date rent statement to 31 May 2024 and further emails to Paul Evans dated 7 September, 22 October, 19 December 2023 and emails with Derek Evans the guarantor dated 10 May, 13 June, 11 and 13 July, 6 and 7 September, 22 October, 7 November, 14 and 19 December 2023, 11, 13 and 16 January and 2 February 2024.

Case Management Discussion

7. The Tribunal proceeded with a CMD on 18 June 2024 by way of teleconference. Ms McCulloch from Eve Property appeared for the Applicants. Both Respondents appeared on their own behalf. The case was heard together with a case for eviction against Paul Evans under case reference number FTS/HPC/EV/23/4641.
8. The Tribunal had before it the Private Residential Tenancy Agreement between the parties dated 30 December 2021, the rent statement, emails dated 10 March, 17 March, 10 May, 13 June 7 September, 22 October, 19 December 2023 to Paul Evans and emails to Derek Evans dated 10 May, 13 June, 11 and 13 July, 6 and 7 September, 22 October, 7 November, 14 and 19 December 2023, 11, 13 and 16 January and 2 February 2024. The Tribunal considered these documents.

9. Ms McCulloch moved the Tribunal to grant a payment order. Arrears had increased to £6245. No payment to rent had been received since 6 November 2023 when £100 was received. They had tried to work with the tenant Paul Evans but he did not respond to any correspondence and the only time they got any response was when they emailed Derek Evans, the guarantor under the tenancy agreement. The Tribunal noted that in terms of Clause 38 of the tenancy agreement which was also signed by Derek Evans on 30 December 2021 that Derek Evans had agreed to be the guarantor for payments due under the tenancy agreement. The Tribunal also noted that pre-action emails had been sent to the Respondents to highlight the arrears, encourage the Respondents to enter into an arrangement to clear the arrears and to seek advice. She understood Paul Evans worked full time and could not understand why no payment to account had not been made.
10. Paul Evans fully accepted he was in arrears of rent and accepted full responsibility for the rent arrears. He apologised to the Applicants for the arrears. His brother Derek Evans the guarantor was not in a position to pay the arrears. He offered to pay £50 per week even if he was evicted.
11. Derek Evans explained that when he agreed to be guarantor his position was different as he was in full time employment. However, he was now on disability benefit and relied on his wife's wages. He submitted Paul Evans accepted full responsibility for the arrears.
12. Paul Evans further explained that he worked full time as a driver but that the company had stopped offering overtime. He was struggling financially and had other bills to pay as well as his rent. Although his take home pay was between £300-£400 per week he explained he needed money to move and for any new property if he was evicted. He advised he was 60 years old, had suffered two heart attacks and suffered also with his mental health. He lived alone at the Property. He started his job in June 2023 and on being questioned by the Tribunal as to why arrears had increased by over £5000 in the last year he explained things had got out of hand and he struggled to adapt from a monthly to a weekly wage. He was not in a position to offer a lump sum payment.
13. On being questioned by the Tribunal, Derek Evans confirmed he understood he was liable in terms of the tenancy agreement for the arrears. However, he emphasised he was not in a position to help due to his change of circumstances.
14. Ms McCulloch advised that the offer of payment of £50 per week was not acceptable. At that rate it would take over two and a half years to clear the arrears and she did not have any faith that Paul Evans would stick to any

arrangement as they had tried to get him to engage before taking action. She clarified that the Applicants were also seeking 8% interest on any sum awarded 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, including the tenancy agreement and the rent statement. Further the Tribunal considered the submissions made by all parties.
16. The Tribunal was satisfied that the arrears stood at £6245. They were accepted by Paul Evans who accepted responsibility of them. Derek Evans also accepted he was liable for the arrears as guarantor.
17. The Tribunal noted the terms of the tenancy agreement. It noted that it provided for interest on any sums due at 8 % per annum and that Derek Evans had also signed the tenancy as guarantor. The rent statement set out how the arrears had arisen. The Applicants had produced evidence of persistent non- payment of rent. The Tribunal was satisfied that the Applicants were entitled to interest at the rate of 8%. The Tribunal was satisfied on the basis of the documents lodged, together with parties' submissions that an order for payment in favour of the Applicants be granted with interest at 8%.

Decision

18. The Tribunal granted an order for payment of £6245 with interest at 8% per annum from the date of Order in favour of the Applicants.

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. Evans

18 June 2024

Legal Chair

Date