

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/23/0576

Re: Property at 1 Newton of Rothmaise, Steading, Inch, AB52 6UR (“the Property”)

Parties:

Mrs Kelly Anne Tanser, Mr John Simpson Tanser, 1 Handpost Cottages, Basingstoke Road, Swallowfield, Reading, RG7 1PY; 1 Handpost Cottages, Basingstoke Road, Swallowfield, Reading, RG7 1PY (“the Applicants”)

Mr Andrew John Smith Duncan, Christina Mhairi Ledingham, 1 Newton of Rothmaise, Steading, Inch, AB52 6UR; 1 Newton of Rothmaise, Steading, Inch, AB52 6UR (“the Respondents”)

Tribunal Members:

Valerie Bremner (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order be granted in favour of the Applicants and against the Respondents in the sum of Four Thousand Six Hundred and Fifty Pounds only (£4650.00).

Background

1. This application for a payment order was first lodged with the tribunal on 22nd February 2023 and a related application for an eviction order with reference HPC/EV/23/0406 had been lodged with the tribunal on 7th February 2023. A case management discussion was fixed in respect of both applications for 5th May 2023 at 2:00pm.

Case Management Discussion

2. The case management discussion was attended by both of the Applicants but there was no appearance by or on behalf of the Respondents. The Applicants requested to proceed in the absence of the Respondents. The tribunal was prepared to grant this request given that it had sight of an execution of service of the applications, associated

papers, and the date of the case management discussion, all of which had been served on the Respondents by posting these through the letterbox at the property on the 20th of March 2023 and the Tribunal was satisfied that fair notice had been given to the Respondents.

3. The Tribunal had sight of both applications, a paper apart, a private residential tenancy agreement, a Notice to Leave together with an email intimating this Notice to Leave, a letter from agents regarding the sale of the property, a notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2023, an email sending this notice, photographs, screenshots of text messages, bank statements, letters to the respondent regarding outstanding rent, emails to the Tribunal, an update sent to the Tribunal on 28th April 2023 together with a further screenshot and a table of outstanding rent.

4. The Applicants own the rented property and entered into a private residential tenancy with the Respondents with effect from 17th October 2022 with monthly rent payable at the rate of £1550 pounds per month payable in advance each month. The start date for the tenancy had been due to be 5th October 2022 but the formal entry date was moved to the 17th to allow the Respondents to obtain and pay the agreed deposit and first month's rent. An updated lease with the new entry date was prepared and signed by the tenants but the Applicants no longer have a copy of this updated agreement. The Respondents are understood to live at the property with their three young children, one of who is believed not yet to be attending school.

5. The Applicants have rented out the property since 2017 as the Applicant John Tanser has required to relocate a number of times due to his employment. In July 2021 the applicant Mr Tanser was given a short-term assignment in London which was due to conclude in December 2022. This assignment has now been made permanent. As a result of this change in circumstances the Applicants opted to market the property for sale. Initially they marketed the property for sale in August 2022. At that stage they could not secure the appropriate price for the property and re advertised the property for rental until they were certain that Mr Tanser's employment would be permanently based in the London area. The Respondents requested to rent the property and the Applicants' situation was explained to them prior to entry to the property in October 2022.

6. The Applicants have started to search for a property in the Greater London area of England and are seeking to reopen the sale process on the rental property with immediate effect to release the substantial equity in the property to help them to buy a suitable property in the Greater London area. The Applicants currently reside in rented accommodation, and they had intended to move into a new newly purchased property after the sale of the leased property. Time is of the essence for them given that their daughter is 3 in June of 2023 and requires to commence pre-school shortly after that date.

7. The last rent paid in terms of the tenancy agreement was in December 2022. The Applicants sent text messages and letters regarding rent arrears to the Respondents but received little communication in response and no rent was paid. The Applicants

have no information regarding the Respondents' circumstances other than that they have three young children.

8. The Applicants are a single income family, and they are starting to struggle due to the accrual of rent arrears and the fact they have to keep up rental payments on their current property. They were aware that they may have to extend their current lease on rented property in England. The rent arrears when the application for a payment order was submitted stood at £4650 pounds but as of the date of the case management discussion rent arrears stood at £7750 pounds. The Applicants asked if they could increase the sum being requested in the payment order application to the amount of the current rent arrears, some £7750. The Applicants accepted that they had not intimated a request to increase the sum in the payment order application to the Respondents at any time in terms of Rule 14A of the Tribunal rules of procedure. They had intimated the level of rent arrears regularly to the Respondents and assumed the Respondents were aware of these. Given that the request to increase the amount being requested by the Applicants had not been intimated the Tribunal was not prepared to consider an increased sum without the matter being continued for intimation on the Respondents. The Tribunal noted that it was open to the Applicants to seek a further order in relation to any sums of accrued rent arrears not recovered under this application.

9. The tribunal was satisfied it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

10. The Applicants entered into a private tenancy agreement at the property with the Respondents in October 2022.

11. The tenancy was due to start on 5th of October 2022, but entry was delayed until the 17th of October 2022 to allow the Respondents to pay the first month's rent and deposit.

12. A fresh tenancy agreement was signed in the same terms as the original agreement other than the start date, but the Applicants no longer have a copy of this second agreement.

13. The monthly rent due in terms of the tenancy agreement is £1550 payable in advance.

14. No rent has been paid by the Respondents in terms of the tenancy agreement since December 2022.

15. Rent arrears accrued at the property in terms of the tenancy agreement as of 22nd February 2023 are £4650.

16. The sum of £4650 is lawfully due to the Applicants by the Respondents.

Reasons for Decision

17. The tribunal considered that a payment order was necessary in this application given that the Respondents are no longer paying rent and are not communicating with the Applicants despite numerous requests for the outstanding rent to be paid. It appeared reasonable in these circumstances to grant the order.

Decision

The Tribunal determined that a payment order be granted in favour of the Applicants and against the Respondents in the sum of Four Thousand Six Hundred and Fifty Pounds only (£4650.00)

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.

V Bremner

5th May 2023

Legal Member/Chair

Date