

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/20/2190

Re: Property at 8 Teavarran, Kiltarlity, By Beauly IV4 7HT (“the Property”)

Parties:

Andrew Thomas Mackenzie and Caroline Annette Mackenzie both residing at Craggan Lodge, Cragganvallie, Kiltarlity, By Beauly, IV4 7HT (“the Applicants”),

South Forrest Solicitors, 8 Ardross Terrace, Inverness, IV3 5NW (“the Applicants’ Representative”) and

James Cameron and Kacey Cameron both residing at 8 Teavarran, Kiltarlity, By Beauly IV4 7HT (“the Respondents”)

Tribunal Member:

G McWilliams- Legal Member

Decision:

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

Background and Summary of Case Management Discussion on 25th February 2021

1. This is an Application for a payment order, contained in documents lodged with the Tribunal between 15th October 2020 and 29th October 2020, brought in terms of Rule 70 (Application for civil proceedings in relation to an assured tenancy) of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the 2017 Rules”).

2. The Respondents had been validly served by Sheriff Officers with copies of the Application papers and Guidance Notes, and letters notifying them of the previous CMD, which was attended by the Applicants' Representative's Mr M. Smith and the Respondents on 7th January 2021 and today's Case Management Discussion ("CMD"). Mr Smith and the Respondents also attended today's CMD which proceeded remotely by telephone conference call at 2pm this afternoon.
3. The Applicants had provided a copy of the parties' Assured Tenancy agreement, and copies of their Bank Statements, showing rental payments received from the Respondents and those that are due, with their Application. The Applicants originally sought payment of arrears of rental payments of £3750.00, in relation to the Property, from the Respondents. At today's CMD the Applicants, through Mr Smith, initially sought payment of an amended arrears amount of £6600.00. The Respondents, to their credit, acknowledged that the outstanding rent now due was in the sum of £7550.00. Mr Smith then sought that a payment order in the sum of £7550.00 be granted. The Respondents consented to this. The Respondents stated that they were not in a position to make a Time to Pay Application at this time but may do so on a later date, either formally by Application to the Tribunal, or informally by liaising with the Applicants' Representative.

Findings in Fact

4. The Respondents have been the tenants of the Property from 1st March 2017 to date.
5. In terms of the parties Tenancy Agreement, the Respondents are due to make monthly rental payments of £950.00 to the Applicants on the first day of each month.
6. Due to a loss of business resulting from the Covid pandemic, the Respondents have been unable to make monthly rental payments to the Applicants since July 2020.
7. At today's date the rent owing by the Respondents to the Applicants is in the sum of £7550.00. The Respondents accept that this sum is currently due.

Reasons for Decision

8. 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.”

9. Accordingly, the Tribunal now has jurisdiction in relation to claims by landlords (such as the Applicants) for payment of unpaid rental against tenants (such as the Respondents) under an assured tenancy such as this.

10. Given the candid statement by the Respondents that there was outstanding rent due in the sum of £7550.00, the Tribunal determined that it was just to grant an order for payment by the Respondents to the Applicants in that amount.

Observation

11. The Respondents also said at today’s CMD that they had received advice from Shelter. As stated today, the Tribunal consider that it is in the interests of the Respondents, and their family, to continue to seek and obtain advice from Shelter or another specialist Housing adviser.

Decision

12. Accordingly, the Tribunal allow the Applicants’ application to amend the sum claimed to £7550.00 and make an order for payment by the Respondents to the Applicants of the sum of £7550.00.

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.

G McWilliams

25th February 2021

Legal Member

Date

