



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/23/0521

Re: Property at Muir Cottage, Ballogie, Aboyne, AB34 5DH (“the Property”)

Parties:

Ms Abigail Nicol, Ms Alice Nicol, Ms Jennifer Nicol, c/o Ballogie Estate Office, Home Farm Bothy, Ballogie, Aboyne, AB34 5DT (“the Applicants”)

Ms Sarah Jane Preston and Mr Sean Gray, Muir Cottage, Ballogie, Aboyne, AB34 5DH (“the Respondents”)

Tribunal Members:

Shirley Evans (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondents)

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 Applicant in the sum of EIGHT THOUSAND AND TWELVE POUNDS AND FIFTY PENCE (£8012.50) STERLING. 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 recovery of rent arrears of £8012.50 raised 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 16 October 2020, a rent statement, and various emails between the parties from 5 May 2022 to 6 October 2022.**
- 3. On 12 April 2023, the Tribunal accepted the application under Rule 9 of the Regulations .**

4. On 21 April 2023 the Tribunal enclosed a copy of the application and invited the Respondents to make written representations to the application by 12 May 2023. The Tribunal advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 1 June 2023. This paperwork was served on the Respondents by James Booth, Sheriff Officer on 26 April 2023 and the Execution of Service was received by the Tribunal administration.
5. The Respondents did not lodge any written representations by 12 May 2023.

Case Management Discussion

6. The Tribunal proceeded with a CMD on 1 June 2023 by way of teleconference. Abigail and Jennifer Nicol appeared with Ms Abigail Nicol speaking on behalf of the Applicants. Denise Smith, the Applicants’ Head of Financial Management was also in attendance. There was no appearance by or on behalf of the Respondents despite the teleconference starting 5 minutes late to allow the Respondents plenty of time to join. The Tribunal was satisfied the Respondents had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in their absence. The case was heard with a conjoined action for recovery of possession of the Property under case reference number FTS/HPC/EV/23/0519.
7. The Tribunal had before it the Private Residential Tenancy Agreement between the parties dated 16 October 2020, a rent statement and various emails between the parties from 5 May 2022 to 6 October 2022. The Tribunal considered these documents.
8. Ms Nicol moved the Tribunal to grant an order for repayment of arrears of £8012.50. The Tribunal noted that in terms of Clause 8 of the tenancy agreement the monthly rent was £1000. She referred to the emails between the parties and that following a meeting with Mr Gray on 26 May 2023 he agreed to make monthly payments of £1312.50. Ms Nicol advised the first and second payments were made but the Respondents defaulted on this agreement by August 2022. The September 2022 payment was paid late. No payment was made in October 2022 and £800 was received on 14 November 2022. With reference to the rent statement the Tribunal noted the arrears were shown as £8012.50 to February 2023 and enquired what the current arrears were. Ms Nicol explained the arrears remained at £8012.50 and that Mr Gray’s mother had paid £3000 on 20 February 2023. Nothing had been paid since.

Findings In Fact

9. The Applicants and the Respondents agreed by way of Clause 8 of a Private Residential Tenancy Agreement commencing 16 October 2020 in relation to the Property that the Respondents would pay the Applicants a monthly rent for the Property of £1000.

10. The Respondents have fallen into arrears of rent and are in breach of Clause 8 of the tenancy agreement.

11. On 26 May 2022, the Applicants agreed to the Respondents entering into a repayment plan in terms of which the Respondents would pay £1312.50 per month. Payments of £1312.50 were made by the Respondents in June and July 2022. The payment due in August 2022 was missed. The September 2022 payment was paid late. No payment was made in October 2022. £800 was received on 14 November 2022. Mr Gray's mother paid £3000 on 20 February 2023. This was the last payment to account.

12. Current arrears are £8012.50.

Reasons for Decision

13. 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 Ms Nicol.

14. The Tribunal noted the terms of the tenancy agreement and the rent statement lodged which set out how the arrears had arisen. The email correspondence showed that parties had entered into a repayment arrangement which the Respondents had not adhered to. Although another three months arrears had accrued since the application was made the arrears remained at £8012.50 as Mr Gray's mother had paid £3000. The Applicants had produced evidence of persistent non-payment of rent. The Respondents had not disputed the application. The Tribunal was satisfied on the basis of the documents lodged, together with Ms Nicol's submissions that the order for payment in favour of the Applicants be granted for the sum claimed of £8012.50.

Decision

15. The Tribunal granted an order for payment of £8012.50

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.

Shirley Evans

6 June 2023

Legal Chair

Date