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 ("the Act")

Chamber Ref: FTS/HPC/CV/19/2282

Re: Property at Glendale Cottage, 2 Small Holdings, Sauchenford, Stirling ("the Property")

Parties:

Mr Russell Gordon, Mrs Lesley Gordon, 92 High Blantyre Road, Hamilton, Glasgow, ML3 9HS; Glenside Farm, by Plean, Stirling, FK7 8BA ("the Applicants")

Ms Cara Craig, Glendale Cottage, 2 Small Holdings, Sauchenford, Stirling ("the Respondent")

Tribunal Members:

Helen Forbes (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment should be granted in the sum of £15,880 with interest thereon at 4% above the Bank of Scotland base rate running from the date of this decision until payment.

Background

1. By application dated 18th July 2019, made in terms of Rule 70 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended ("the Rules"), the Applicants sought an order for payment in respect of rent lawfully due in the sum of £8,080. Parties entered into a tenancy agreement in respect of the Property commencing on 1st February 2016. The monthly rent was £1200.

2. At a Case Management Discussion on 6th December 2019, the sum sought was reduced to £4,480, as partial payment of the arrears had been made by the Respondent.

3. Thereafter, both parties lodged written submissions and documentation.

4. The Respondent's position was that there were no rent arrears. Only Mr Gordon's name appears on the lease, and, at the commencement of the tenancy, he was not a registered landlord. She was given advice that she did not have to pay rent in this situation, therefore, she considered her rent account should be in credit for the period during which Mr Gordon was not registered.

5. The Respondent further argued that a Form AT2 served on her by the Applicants to increase the rent under section 24 of the Housing (Scotland) Act 1988 on 15th August 2018 is invalid, as it includes Mrs Gordon's name and she is not the joint landlord in terms of the tenancy agreement. Therefore, any rent said to be due in respect of the rent increase is not lawfully due.

6. The Respondent further argued that she withheld payment of rent on occasion due to Mr Gordon's failure to carry out repairs.

7. A Case Management Discussion ("CMD") took place on 11th March 2020.

8. At the CMD, the Respondent accepted that there was no merit in her argument regarding rent not being due while the landlord was not registered.

9. The Applicants put forward an argument that the Respondent had accepted Mrs Gordon as her landlord by paying rent to her and contacting her regarding the tenancy, and, as such, Mrs Gordon ought to be accepted as a landlord, despite her name not being on the tenancy.

10. The Respondent agreed to lodge a statement setting out the dates, amounts and reasons in relation to any sums said to be withheld due to the Applicants' failure to carry out repairs. The Respondent was requested to also include, in each case, a note of whether and when the repairs referred to were carried out, and by whom.

11. A hearing took place on 11th and 12th August 2020, when evidence was heard in a conjoined case (FTS/HPC/EV/2279). The decision of the Tribunal in that case included a finding that Mrs Gordon was not a joint landlord in respect of the Property.

12. On 5th October 2020, written representations and productions were received from the Applicants.

13. On 10th October 2020, a hearing set down for 13th October 2020 was postponed following a request from the Respondent regarding ill-health.

14. By email dated 12th October 2020, the Applicants made an application to amend the sum sought to £15,880, which sum was comprised of unpaid rent.

15. The tenancy ended on 28th October 2020.

16. By email dated 2nd November 2020, the Applicants made an application to amend the sum sought to £16,566.95. The additional sums were in respect of costs relating to eviction and cleaning of the Property. Parties were notified that, in terms of Rule 14, the Respondent would require a period of at least 14 days prior to the hearing to provide written representations in respect of the new issues introduced by the application for amendment, therefore, these issues could not be considered at the hearing on 9th November 2020.

17. At 03.23 on 9th November 2020, the Respondent informed the Tribunal by email that she would not be in attendance due to ill-health. Written representations and productions were lodged.

The Hearing

18. A hearing took place by teleconference on 9th November 2020. The Applicants were in attendance. The Respondent was not in attendance.

19. The Applicants informed the Tribunal that they had not seen the recent email and productions lodged by the Respondent, and they did not have the means to access any email correspondence at this time. It was their preference that the hearing continue, notwithstanding the lodging of late productions and representations. The Tribunal adjourned to consider matters.

20. The Tribunal considered the terms of Rule 22, as to whether to allow late lodging of the documents. The Tribunal noted that the Respondent had been reminded by the Tribunal on 10th October 2020 that all documentation had to be lodged 7 days before the hearing. The Tribunal also noted that the Respondent was ordered to lodge details of her defence to the case at the CMD in March 2020, and had not done so.

21. On balance, and given the fact that the Respondent was not in attendance, the Tribunal considered that it would be appropriate to read and consider the late documentation provided by the Respondent.

22. Having read the representations and productions lodged by the Respondent, the Tribunal took the view that certain of the representations, and the productions were not relevant to the matters before it. The Tribunal noted that the Respondent provided no evidence that she had informed the Applicants at any time that she was withholding rent due to necessary repairs. Much of the information lodged by the Respondent seemed to relate to the possibility of a counterclaim for loss and expenses against the Applicants in the sum of £4,858.77. The Tribunal is unable to consider a counterclaim as a defence to this action. This would require a separate application. There was some email correspondence regarding the septic tank, the attendance of a joiner, flooding at the Property and an enquiry regarding bank details for payment of rent.

23. The Tribunal agreed to allow the late lodging of the Respondent's written representations, given that she was not present to make those representations at the hearing.

24. The Tribunal considered the terms of Rule 29 of the Rules. The Tribunal determined that the Respondent had been given reasonable notice of the time and date of the hearing. The Tribunal determined that the requirements of Rule 24(1) had been satisfied and that it was appropriate to proceed with the application in the absence of the Respondent, upon the representations of the Applicants and all the material before it.

Preliminary Issues

25. There was some discussion about the application to amend in respect of new issues made by the Applicants. The Applicants were in agreement that they would prefer to withdraw the application to amend and make a new application to the Tribunal in due course.

Representations by the Applicants

26. Mrs Gordon submitted that the Form AT2 was valid. The inclusion of her name as joint landlord did not negate the purpose of the notice. Mrs Gordon referred to the case lodged with their submissions, *Ravenscroft Properties Ltd v Hall 2001 WL 1479821 (2001),* as authority that an error in a notice does not invalidate the notice. The Respondent had not raised any issues regarding the notice at the time of receipt, despite her claims to have raised this with solicitors. Responding to questions from the Tribunal, Mrs Gordon said the Respondent did not appeal the notice or ask that a fair rent be established for the Property. The rent had always been considered low, in terms of covering the costs of the Applicants, and it was always intended that the rent would increase. Mrs Gordon set the increased rent by considering similar properties in the area. She felt it was still on the low side even after the increase. Responding to questions from the Tribunal, Mrs Gordon said they had never considered providing a Form AT1 to change the terms of the tenancy, as they had always considered Mrs Gordon to be a joint landlord.

27. The Applicants said that the Respondent had not notified them that she was withholding rent other than in respect of the argument that Mr Gordon was not a registered landlord. This argument was put forward by the Respondent as a reason for withholding rent in January 2018, by which time Mr Gordon was a registered landlord. The only other time withholding rent had been referred to was when repairs were required to a shower in the Property. The Respondent emailed the Applicants on 12th February 2020, stating that the shower required repair and she would withhold her rent if it was not repaired. The shower was repaired the following morning. Despite numerous letters from Mrs Gordon to the Respondent regarding her lack of payment of rent, the Respondent did not at any time raise the matter of withholding rent as a reason for not paying her rent, nor did she respond to the emails. Neither had

the Respondent ever stated that her rent should be reduced due to being unable to have full use of the Property.

28. Mrs Gordon submitted that the full amount sought, £15,880, was due, and that interest was sought on that sum at 4% above the Bank of Scotland base rate, as provided for at clause 8 of the tenancy agreement.

The Respondent's position

29. In her written representations, the Respondent stated: *The determination of validity of the AT6 is irrelevant, if the landlord wishes to make any changes to the tenancy other than an increase in rent then they must complete form AT1(l). This was not done. It was clearly the applicants intention to amend the terms of the tenancy by including Mrs Gordon as a landlord and this was evidenced throughout their argument that Mrs Gordon was a "co-landlord". As a result, the rent increase can not be valid as this should have been notified using form AT1(l).*

30. In respect of rent arrears, the Respondent's written submission stated: *As the rent increase was not valid, the rent arrears at 6/12/19 could be considered to be £1480, the arrears from 1/4/20 to present could be calculated as 6 months at £1200 = £7200 and one payment of £1045.16 (pro rata for October). This would make the total arrears £9,725.16, however as Mr and Mrs Gordon did not apply for this to be amended in the correct manner and within the timescale allowed this should be considered to be £4480 for this hearing, and mr and Mrs Gordon should be required to submit a new application should they wish to pursue any additional amount.*

Findings in Fact

31.

(i) The Property is registered in the Land Register for Scotland under Title Number STG4101. It is in the joint ownership of the Applicants.

(ii) Lesley Gordon became a registered Landlord with Stirling Council on 24th December 2012.

(iii) Russell Gordon became a registered Landlord with Stirling Council on 7th December 2017.

(iv) Russel Gordon entered into an agreement purporting to be a short assured tenancy agreement with the Respondent commencing on 1st February 2016 at a monthly rent of £1200.

(v) On 15th August 2018, the Applicants served a Form AT2 Notice, in terms of section 24(1) of the 1988 Act, dated 13th August 1988 on the

Respondent to increase the rent to £1500, to take effect from 17th February 2019. The Notice described both Applicants as landlords.

(vi) The Respondent took the view that only Russel Gordon was her landlord and the Form AT2 Notice was not, therefore, valid.

(vii) At various times during the tenancy, the Respondent failed to pay the rent lawfully due.

(viii) The Form AT2 served by the Applicants on the Respondents is a valid Form AT2. The rent, therefore, increased to £1500 on 17th February 2019.

(ix) Rent lawfully due remains outstanding in the sum of £15,880. The Applicants are entitled, in terms of the agreement between the parties, to recover rent lawfully due.

Determination and Reasons for Decision

32. In terms of section 24(1) of the Act, a landlord is entitled to serve notice in the prescribed form upon a tenant for the purpose of securing a new rent. The Tribunal considered that the inclusion of Mrs Gordon's name in the Form AT2 did not invalidate the notice. The notice was in the prescribed form and contained all the necessary information. There was no error in the content of the notice. The notice fulfilled the function it was meant to perform. The Tribunal considered that the inclusion of Mrs Gordon's name in the notice did not go to the fundamental validity of the notice. Therefore, the Tribunal found the notice to be valid. The rent, therefore, from 17th February 2019, increased to £1500 per month.

33. No credible evidence was put forward by the Respondent to indicate that she withheld rent at any time as a lever with which to force the Applicants to respond to complaints. Although this had been raised by the Respondent as a defence to the action in the early stages, it was not addressed in her late written representations, which, as mentioned previously, focussed mainly on a possible counterclaim. It was noted that, on the only occasion that documentary evidence mentions the withholding of rent by the Respondent in respect of a faulty shower, the Applicants responded immediately by arranging repair of the shower.

34. The application to amend the sum sought to £15,880 was lodged and intimated correctly and timeously, in terms of the Rules, therefore, the Tribunal accepted the application. Rent lawfully due remains outstanding and the Applicants are entitled to payment of this sum in terms of the tenancy agreement between the parties.

Decision

35. An order for payment is granted to the Applicants in the sum of £15,880 with interest thereon at 4% above the Bank of Scotland base rate running from the date of this decision until payment.

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.

Helen Forbes	**9th November 2020**
Legal Member/Chair	**Date**