



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) 2016 Act

Chamber Ref: FTS/HPC/CV/22/3338

Re: Property at 37 Errochty Grove, Perth, PH1 2SW (“the Property”)

Parties:

Douglas Lambert, Louise Lambert, 14 Burnbank, Bridge of Earn, Perth, PH2 9BW (“the Applicants”)

Jamie Morrison, 3D McDonald Court, Fairfield, Perth, PH1 2TA (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member)

Decision (in absence of the Respondent)

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

Background

- 1) This was an application by the Applicants for civil proceedings in relation to a private residential tenancy in terms of rule 111 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”), namely an order for payment of rent arrears. The tenancy in question was a Private Residential Tenancy of the Property by the Applicants to the Respondent’s late mother, Isabel Morrison, commencing on 30 March 2018.
- 2) The application was dated 12 September 2022 and lodged with the Tribunal on that date. The application sought payment of arrears of £1,709.89 and was accompanied by a rent statement showing arrears from 1 January to 14 March 2022 in that amount. The application explained that the arrears related to a period after the death of the original tenant, Isabel Morrison, through to the Respondent returning keys to the Property. It amounted to two months (January and February

2022) at £725 per month, and a pro-rated amount for 1 to 14 March 2022 of £259.89. The lease for the Tenancy accompanied the application and detailed a rental payment of £695 payable in advance on the 30th of each month.

The Hearing

- 3) The matter called for a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 24 October 2022 at 10:00. We were addressed by Murray Hall, Associate Director, of the Applicants’ letting agent, Premier Properties Perth. There was no appearance from the Respondent.
- 4) We were informed by the Clerk that no contact had been received from the Respondent (or on his behalf) with the Tribunal. The Applicants’ agent said that the keys for the Property had simply been put through their letterbox on 14 March 2022 but he said this was consistent with the Respondent’s communications prior to return of the keys. (The Respondent had previously told the Applicants’ agent that he was on the local authority housing list, that he would be unable to move out until he was rehoused, but that he would return the keys as soon as he was rehoused.) I was not addressed on any material contact occurring since return of the keys.
- 5) I considered that the Respondent had received clear intimation of the CMD from the Tribunal’s Sheriff Officer and, having not commenced the CMD until around 10:05, I was satisfied to consider the application in the Respondent’s absence. In any case, no attempt was made by the Respondent to dial in late to the CMD.
- 6) At the CMD, the Applicant confirmed that the application for an order for payment of £1,708.89 was still insisted upon, to cover the period 1 January to 14 March 2022 when the keys were handed back. In regard to the sum sought, the Applicants sought payment only from the date that the former tenant had passed away (which they believed was in or around December 2021). They had originally believed that the Respondent was vacating the Property on his mother’s death.
- 7) The Applicants’ agent explained that the rent for the Tenancy was increased from £695 per month to £725 per month on 1 October 2020 in terms of the procedures governing the Tenancy, and the increased rent was paid for many months thereafter by the late Isabel Morrison.
- 8) I asked to be addressed on the statutory test as to whether the Respondent had inherited the Tenancy. The Applicants’ agent gave the following information:
 - a) Isabel Morrison moved into the Property alone, but the Respondent, her son, moved in some time after.
 - b) Isabel Morrison had not inherited the Tenancy herself, and took on the Tenancy of new on 30 March 2018.
 - c) They knew of no spouse or partner of Isabel Morrison.
 - d) They did not know the Respondent’s age but estimated him to have been in his 30s at the time of Isabel Morrison’s passing.

- e) They did not know exactly when the Respondent moved into the Property but it was earlier than December 2020, so more than a year prior to Isabel Morrison's date of death.
- f) The Respondent had told the Applicants' agent that he was living full time at the Property.

For all these reasons, the Applicants submitted that the Respondent had inherited the Tenancy in or around December 2021 and was liable for rent up to the termination of the Tenancy, which they were happy to accept as 14 March 2022 when the keys were returned.

- 9) No interest was sought. No motion was made for expenses.

Findings in Fact

- 10) On 30 March 2018, the Applicants let the Property to Isabel Morrison under a Private Residential Tenancy with commencement on 30 March 2018 ("the Tenancy").
- 11) Under the Tenancy, in terms of clause 8, the tenant was to make payment of £695 per month in rent to the Applicants in advance, being a payment by the 30th of each month to cover the month to follow.
- 12) From 1 October 2020, the sum due in terms of clause 8 of the Tenancy Agreement was increased, though a valid process under the Tenancy, to £725 per month.
- 13) Isabel Morrison passed away in or around December 2021.
- 14) The Respondent is the son of Isabel Morrison.
- 15) The Respondent was over 16 at the time of Isabel Morrison's death.
- 16) The Respondent occupied the Property as his only or principal home at the time of Isabel Morrison's death and had done so for a continuous period of at least 12 months ending with her death.
- 17) The Respondent continued to occupy the Property after Isabel Morrison's death until 14 March 2022.
- 18) The Respondent inherited the Tenancy of the Property in or around December 2021.
- 19) The Tenancy terminated by mutual agreement, with the Respondent's return of the keys to the Applicants' agent, on 14 March 2022.
- 20) As of 14 March 2022, there was unpaid arrears of rent of £1,709.89, being the rent sought by the Applicants for the period 1 January to 14 March 2022.

- 21) On 27 January 2023, the Tribunal intimated to the Respondent by Sheriff Officer service the date and time of the CMD of 6 March 2023.
- 22) The Respondent provided no evidence of payment of any part of the said unpaid rent outstanding of £1,709.89.

Reasons for Decision

- 23) The application was in terms of rule 111, being an order for civil proceedings in relation to a PRT.
- 24) In regard to whether the Respondent was the tenant, the statutory test for inheritance of a tenancy by a family member is set down at section 68 of the Private Housing (Tenancies) (Scotland) Act 2016, the parts relevant to this application are as follows:
 - (1) *When—*
 - (a) *the sole tenant under a private residential tenancy dies,*
 - (b) *the tenant's interest under the tenancy was not inherited by the tenant, and*
 - (c) *nobody inherits the tenancy under section 67 [that is, no partner or spouse has inherited],*
any member of the tenant's family who meets the conditions set out in subsection (2) becomes the tenant under the tenancy.
 - (2) *The conditions are—*
 - (a) *that the family member is at least 16 years of age at the time of the tenant's death, and*
 - (b) *that the family member—*
 - (i) *is occupying the let property as the family member's only or principal home at the time of the tenant's death, and*
 - (ii) *has done so for a continuous period of at least 12 months ending with the tenant's death.*
 - (3) *In determining whether the condition set out in subsection (2)(b)(ii) is met, no account is to be taken of any time during which the family member was occupying the let property if and so far as it pre-dates the tenant telling the landlord, in writing, that the let property was being occupied as the family member's only or principal home.*
- 25) I was satisfied on the basis of the submissions at the CMD that the statutory requirements were met in regard to sub-sections 68(1)-(2). No issue was taken by the Applicants in regard to written notification under sub-section 68(3). In consideration that the Respondent made no appearance, I was satisfied to hold that the Tenancy had been inherited by the Respondent and was liable for rent after the passing of his late mother, Isabel Morrison.
- 26) In regard to the rent arrears, I did not follow the Applicants' arithmetic but I think this is to the Respondent's benefit. I read the Tenancy Agreement as putting the likely rent liability Isabel Morrison's passing as high as £1,783.70 as follows:

- £725 for 30 December 2021 to 29 January 2022;
- £725 for 30 January to 28 February 2022; and
- Rent in the range of £327.42 to £333.70 for 1 to 14 March 2022 (based on whether rent is pro-rated against a month of 31 days, or the full year).

As the Applicants' sought less than this amount, and that there was no appearance from the Respondent, I was satisfied on the basis of the application and supporting papers to hold that rent arrears for the period 1 January to 14 March 2022 was the sum of £1,709.89 and that it all remained outstanding.

- 27) The application clearly set out the sums and I was satisfied that the necessary level of evidence for these civil proceedings had been provided. No dispute was stated by or on behalf of the Respondent. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. I was thus satisfied to make a decision at the CMD to award the sum of £1,709.89 against the Respondent in regard to sums due under the lease in regard to rent arrears for the period 1 January to 14 March 2022.

Decision

- 28) In all the circumstances, I was satisfied to make the decision to grant an order against the Respondent for payment of £1,709.89.

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.

Joel Conn

6 March 2023

Legal Member/Chair

Date