



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)**

**Chamber Ref: FTS/HPC/CV/24/1147**

**Re: Property at Easter Rattray Farmhouse, Blairgowrie, PH10 7HG (“the Property”)**

**Parties:**

**Easter Rattray Farms, Easter Rattray House, Blairgowrie, PH10 7HQ (“the Applicant”)**

**Miss Jemma Keellings, Mr Stephen McNamara, Easter Rattray Farmhouse,, Blairgowrie, PH10 7HG; Easter Rattray Farmhouse, Blairgowrie, PH10 7HG (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member) and Gerard Darroch (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment by the Respondent in the sum of £6,500 should be made in favour of the Applicant.**

**Background**

1. By application lodged on 7 March 2024, the Applicant applied to the Tribunal for an order for payment against the Respondent. The application sought the sum of £6,650 in respect of rent arrears and £809.26 in respect of electricity charges owed by the Respondent. Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement, a Rent Statement showing the balance of rent arrears owing as at the date of application of £6,650 and an Invoice in respect of the electricity charges.

2. Following initial procedure, on 29 May 2024, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. This application was conjoined with an application for eviction which had been lodged with the Tribunal at the same time.
4. On 30 August 2024, Sheriff Officers served a copy of the Application and supporting documentation on the Respondent, together with intimation of the date, time and details of the Case Management Discussion (“CMD”) to take place by telephone conference call on 8 October 2024. Written representations were invited from the Respondent but none were lodged prior to the CMD.

### **Case Management Discussion**

5. The CMD took place on 8 October 2024 at 10am by telephone conference call. There were some technical difficulties experienced with the telephone-conferencing facility which led to the CMD commencing around 10.25am, for which the Tribunal apologised. The Applicant was represented by Ms Rebecca Burton of Strutt & Parker, letting agents. The first-named Respondent, Miss Jemma Keellings was in attendance. She indicated that the second-named Respondent, Mr Stephen McNamara, had messaged her to state that he had been unable to join the call. Accordingly, Miss Keellings was asked to message him and ask him to try again and the CMD was paused to allow him a further opportunity to join. However, he did not do so and Miss Keellings stated that he had not responded to her message. The Tribunal decided to commence the CMD and instructed the Clerk to leave the line open to allow Mr McNamara to join late, but he did not do so. Miss Keellings confirmed that, although she and Mr McNamara had separated, their position in relation to the applications was the same and she could speak for them both.
6. After introductions and introductory remarks by the Legal Member, who explained the purpose of the CMD, Miss Keellings was asked to confirm her position in respect of the eviction. She stated that she and Mr McNamara had recently separated and that she continued to live at the Property, with her three dogs. He had moved out and was staying with his parents. Miss Keellings confirmed that she accepts that there are rent arrears and confirmed they will be paid back. She stated that she had kept in contact with the Applicant’s letting agents throughout and informed them of their circumstances. Mr McNamara had not been working and Miss Keellings had also experienced difficulties in connection with her employment and this led to the rent arrears and them defaulting on a previous payment plan that had been agreed. Miss Keellings had gained full-time employment from January 2024 and Mr McNamara is also now in employment. They had been managing to pay £300 per month towards the rent arrears on top of the £1,000 per month rent. However, Miss Keeling’s wages were arrested over the last few months and she has recently been signed off through illness. Miss

Keellings stated that she suffers from narcolepsy and her doctor will not permit her to drive at the current time, which means she cannot get to her work which is some distance away, in Aberdeenshire. Miss Keeling confirmed that she is in receipt of full sick pay and that Mr McNamara has also agreed to keep contributing towards the rent, although he is no longer living at the tenancy. She stated that Mr McNamara gave her £1,300 which she paid into the rent account on 2 October 2024 via internet banking. She also accepts that there is a payment due for electricity and will make an arrangement in relation to that too.

7. Ms Burton confirmed that the tenancy began in December 2022 and that arrears started to arise in June 2023. When Notice to Leave was served in respect of the eviction application, in January 2024, the arrears were £4,650 and when these applications were lodged, arrears had risen to £6,650. The arrears currently stand at £6,500 and outstanding electricity charges at £809.26. It was noted that the electricity figure claimed was stated in the application papers to be the amount owing at September 2023. Ms Burton confirmed that, since the application was lodged, payments have been made by the Respondent of £1,300 in March, April, May and June 2024, £1,100 in July 2024 and £500 in September 2024. Ms Burton's records do not show the payment of £1,300 that Miss Keellings claims to have paid on 2 October 2024 but Ms Burton stated that there was a possibility that this payment had been received but not yet allocated into the rent account. [During a subsequent adjournment, Ms Burton contacted the finance team of her company who confirmed that they had done a 'live' search of their accounts and had been unable to locate any payment of £1,300 coming into their accounts on 2 October 2024 to date.]
8. Ms Burton confirmed, in relation to a further question from the Tribunal that, although there had been some engagement from Miss Keellings in respect of the arrears and updating them on her circumstances, in her view, they have tried everything to resolve the arrears situation. They have communicated with Miss Keellings throughout regarding the arrears, both in writing and via messages and agreed a payment plan which was not maintained by the Respondent. Despite this, the arrears have risen to £6,500 and are likely to continue to accrue as it appears unlikely that the Respondent is able to maintain payments towards ongoing rent and the arrears, given their circumstances.
9. In respect of the electricity charges, Miss Keellings stated that she thought payments had been made towards electricity charges but was not sure about the outstanding figure. She explained that regular statements were not issued to her regarding the electricity charges. The Tribunal asked for clarification from Ms Burton as the Tribunal had noted that the wording of the rent clause in the tenancy agreement was a little unclear as it states that the rent was £950 per calendar month which *includes* the sum of £50 per month towards electricity costs but, elsewhere, there is mention of payments of £1,000 per calendar month and that this was the amount that appeared to have been paid. Ms Burton stated that it was her understanding that the monthly payment due was £950 rent *plus* £50 towards electricity, totalling £1,000 per

month. She conceded that she was not in a position to further clarify the electricity charge sought as she notes that this was stated to be the sum owing as at September 2023 and does not know if this is still the sum owing or if there is now more or less owing than that figure. It was explained that, in these circumstances, the Tribunal could continue the payment application to a later date in order for the figure claimed to be clarified and vouched. Alternatively, if the Applicant wished an order made today in respect of the rent arrears only, the Tribunal would simply not make any order in respect of the electricity charges part of the claim, which the Applicant could then pursue by way of a fresh payment application, if appropriate, in due course. Ms Burton opted for the latter course.

10. The Tribunal adjourned to consider both applications in private and also to allow Ms Burton the opportunity to hear back from the finance team of her company regarding the further payment of £1,300, which the Respondent claimed to have made on 2 October 2024. On re-convening, Ms Burton advised [as per paragraph 7 above] that the finance team had confirmed that they had carried out a 'live' search of their accounts and had been unable to locate any payment of £1,300 coming into their accounts on 2 October 2024 to date. The Legal Member advised that the Tribunal had decided to grant the payment order sought in the sum of £6,500 in respect of rent arrears, on the understanding that the Applicant would deduct from this sum the amount of £1,300 if it arrives in the rent account in the coming days. Ms Burton confirmed this and also that they would advise Miss Keellings should this happen. Parties were thanked for their attendance and the CMD brought to a close.

### **Findings in Fact**

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the joint tenant of the Property by virtue of a Private Residential Tenancy commencing on 1 December 2022.
3. The accepted rent in terms of the tenancy was £1,000 per calendar month, although there was some dubiety from the terms of the tenancy agreement if this sum included a charge of £50 per calendar month towards the costs of electricity.
4. Rent arrears began to accrue from June 2023 and since then, the rent account has been continuously in arrears.
5. The Respondent had, for several months, been paying the sum of £1,300 per calendar month which included the sum of £300 towards the rent arrears but this arrangement had not been maintained.
6. The last payment allocated to the rent account by the date of the CMD was £500 in September 2024.

7. Rent arrears amounted to £6,650 when the application was lodged on 7 March 2024 and currently amount to £6,500.
8. The Respondent has been called upon to make payment of the rent arrears or enter into and maintain a satisfactory payment arrangement but has failed to do so.
9. The Respondent admits the level of rent arrears (although claims to have made a further payment of £1,300 on 2 October 2024 which had not been received by the Applicant's letting agents as at the date of the CMD) and that rent had been in arrears for some time.
10. The Respondent had been experiencing financial difficulties for some time and the first-named Respondent is not currently able to work through ill health.
11. The amount due and owing to the Applicant in respect of rent arrears is £6,500.

### **Reasons for Decision**

1. The Tribunal gave careful consideration to the background papers including the application and supporting documentation and the oral representations made by the Applicant's agent and the first-named Respondent, Miss Keellings, at the CMD.
2. The Tribunal considered that there was no material before it to contradict the information from the Applicant in respect of the rent arrears (other than the alleged further payment of £1,300 made by the Respondent recently) and therefore no requirement to continue the application to an Evidential Hearing. The Tribunal had regard to the terms of the tenancy agreement, the rent statement and the additional information provided orally by Ms Burton at the CMD, including details of further payments made to account by the Respondent since the date of the rent statement in March 2024. The Tribunal was satisfied that the sum of £6,500 was owing by the Respondent in respect of rent incurred by them during the tenancy.
3. The Tribunal concluded that, in the circumstances, an order in the sum of £6,500 sought could properly be made at the CMD today.

### **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.**

**N Weir**

**Legal Member**

**8 October 2024  
Date**