

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014 (“the 2014 Act”) and Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/CV/24/3185

Re: 3 East Mains Cottages, Elgin, IV30 5PT (“the Property”)

Parties:

James Brash, Ritsons CA, 103 High Street, Forres, IV36 1AA and Brodies & Co. (Trustees) Limited, formerly of 15 Atholl Crescent, Edinburgh, EH3 8HA and presently at Capital Square, 58 Morrison Street, Edinburgh, EH3 8BP, as executors of the late Robin Alexander Lovie Falconer, lately of Shempston House, Shempston, Duffus, IV30 5RJ (“the Applicant”)

Brodie LLP, Clava House, Cradlehall Business Park, Inverness, IV2 5GH (“the Applicant’s Representative”)

Mr Glenn Campbell, 3 East Mains Cottages, Elgin, IV30 5PT (“the Respondent”)

Tribunal Members:

Ms Susanne L. M. Tanner K.C. (Legal Member)
Ms Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that the Respondents should pay to the Applicant the sum of THREE THOUSAND POUNDS (£3000.00) STERLING; and made an Order for Payment in respect of the said sum



Reasons

Procedural Background

1. On 11 July 2024, the Applicant's Representative made an Application to the tribunal under Rule 111 of the 2017 Rules seeking a payment order against the Respondent in favour of the Applicant in respect of rent arrears of £1,500.00.
2. Supporting documents were lodged with the Application:
 - a. Copy private residential tenancy agreement dated 22 December 2020.
 - b. Copy rent arrears statement dated 1 July 2024.
3. The tribunal's administration obtained a copy a sasine search sheet for the Property which show a disposition in favour of the late Robin Alexander Lovie Falconer dated 27 January 1988.
4. The Applicant's Representative provided Confirmation in favour of the executors.
5. On 2 August 2024, the application was accepted for determination and the tribunal sent letters of notification to all parties with the date, time and arrangements for joining the Case Management Discussion ("CMD") in relation to the Application on 31 October 2024 by teleconference at 1000h. The Application paperwork was personally served on the Respondent by Sheriff Officers. The Respondent was told that if he wished to submit written representations these should be sent to the tribunal by 15 October 2024.
6. The Respondent did not submit any defence or any written representations to the tribunal.
7. On 14 October 2024, an updated statement of arrears was lodged by the Applicant's Representative showing rent arrears of £3,000 as at 1 October 2024. The Applicant's Representative asked for the Application to be amended to seek the increased sum.



CMD Teleconference: 31 October 2024 at 1000h

8. Mr McPherson from the Applicant's Representative attended.
9. The Respondent did not attend. The tribunal was satisfied that the requirements of rule 24(1) regarding the giving of notice of a hearing had been duly complied with and proceeded with the Application upon the representations of the party present and all the material before it.

Submissions by Applicant's Representative

10. Mr McPherson's position is that the rent schedule was sent on time on 14 October 2024 and he requested permission to amend the Application to seek the increased sum of £3,000.00. The tribunal allowed the Application to be amended.
11. Mr McPherson referred to the updated arrears schedule which shows arrears to today's date (31 October 2024) as £3000.00. The Respondent has made no rent payments in August, September or October 2024. A further rent payment of £500 will be due on 1 November 2024.
12. Mr McPherson told the tribunal that he had spoken to the Respondent yesterday (30 October 2024) in advance of the CMD in this case and the related eviction Application (EV/24/3182).
13. The Respondent told Mr McPherson that he and his family have moved out of the Property into local authority accommodation. Mr McPherson recommended that the Respondent attend the CMD today and the Respondent indicated that he would. In relation to the rent arrears, the Respondent mentioned some points to Mr McPherson about cracked tiles and mould in the Property at one stage in the past. Mr McPherson spoke to the Letting agent about those issues this morning (31 October 2024). She said that there was no notice from the Respondent about the cracked tiles and if there had been, repairs would have been instructed. She told Mr McPherson that the issue with mould had been raised previously and the cause was lack of ventilation and heating and the house being very cluttered. The letting agent discussed that with the Respondent and recommended opening windows, heating and clearing the clutter. Mr McPherson said that the Respondent has not followed any separate tribunal procedure with repairs, nor has he indicated to the letting agent at any



stage that he was withholding rent because of repairs issues. The letting agent sent an inventory of the Property at the date of entry, and Mr McPherson said that at that point the Property was shown to be in good order.

14. The Respondent has not attended the CMD or provided any defence to the Application.

15. The tribunal adjourned to deliberate.

Findings-in-Fact

16. The Applicant is the executors of the late Robin Alexander Lovie Falconer, lately of Shempston House, Shempston, Duffus, IV30 5RJ.

17. The interest of the landlord under the tenancy became vested in executors following the death of the late Robin Alexander Lovie Falconer and pursuant to the confirmation dated 20 September 2023.

18. There is a private residential tenancy agreement between the Applicant and the Respondent for the Property which started 21 December 2020.

19. The rent arrears as at 31 October 2024 amounted to £3000.00.

14. The Respondent has not opposed the Application.

Discussion

15. As the tribunal was satisfied that the Respondent owes £3000.00 to the Applicant by way of rent arrears for the tenancy of the Property for the period to 31 October 2024, the tribunal made an Order for Payment of that sum.

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.

SLM Tanner

**Ms Susanne Tanner K.C.
Legal Member/Chair**

31 October 2024