



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 1988**

**Chamber Ref: FTS/HPC/CV/24/0494**

**Re: Property at Hamewith, Cluny, Sauchen, Inverurie, AB51 7RR (“the Property”)**

**Parties:**

**Mr Malcolm Johnstone, Ms Jackie Forsyth, Vale View Forbes, Alford, Aberdeenshire, AB33 8QL (“the Applicant”)**

**Mr Cosmo Linzee Gordon, Cluny Castle Estate Office, Cluny Castle, Sauchen, Inverurie, AB51 7RT (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment in the sum of One thousand four hundred pounds (£1400) Sterling**

**Background**

- 1 By application to the Tribunal the Applicants sought an order under rule 70 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) against both the Respondent and the RAC Linzee Gordon Grandchildrens Trust. In summary the Applicants sought repayment of their tenancy deposit in the sum of £800, advance rent in the sum of £600 and rent in the sum of £183 following the termination of the tenancy between the parties.
- 2 A legal member of the Tribunal with delegated powers from the Chamber President determined that there were no grounds upon which to reject the application. The application was therefore referred to a Case Management Discussion (“CMD”). Notification of the CMD was given to the parties.

- 3 On 3 July 2024 the Tribunal received written representations from the Respondent. The Respondent explained that the property had originally been let to the Applicants by the RAC Linzee Gordon Grandchildren's Trust. The Trust had employed an agent to act on their behalf. The Trust had since been disbanded and the trustees were no longer available. The Respondent confirmed that there were no bank accounts remaining under the name of the Trust and his efforts to date in procuring the return of the funds had been unsuccessful.

### **The Case Management Discussions**

- 4 The first CMD took place on 19 July 2024 by teleconference. The Applicants were both in attendance. The Respondent was also present.
- 5 The tribunal explained the purpose of the Case Management Discussion and the legal test applicable to both applications. It noted the terms of the Respondent's written representations, namely that the Trust had let the property to the Respondents in 2005. The Trust had since been dissolved. The Respondent did not know whether there were any funds left and did not have access to the accounts in any event.
- 6 The Legal Member clarified with the Respondent that ownership of the property, with the tenancy in place, was transferred to him around 2013 when he was aged 18. He did not know whether the Applicants had been advised of the change in ownership. Mr Johnstone confirmed that they had not been formally advised. There was a question as to the ownership of the property which had come to light following the termination of the tenancy. The Respondent confirmed that he was the current owner and landlord of the property. He did not deny that. The only query was the disparity between the Trust and the associated bank accounts. The signatories and bank accounts were disconnected from his position as landlord. There was a certain element of connection in terms of legal responsibility however there were other beneficiaries of the trust. The bank accounts were kept separate from him.
- 7 The Respondent confirmed that at some point during the tenancy payments would have been redirected to an account in his company's name. However he would have to check the exact date. He advised that it would be helpful if Mr Johnstone could provide the details of the account he had paid rent into when the Trust was still in existence. The Legal Member asked the Respondent if he had sought advice from a solicitor regarding the matter. The Respondent advised he had not.
- 8 Mr Johnstone confirmed that he sought the return of the tenancy deposit in the sum of £800, together with an advance payment of rent in the sum of £600. He believed that the latter had been held, as opposed to applied to the first rent payment. Mr Johnstone confirmed that he was also seeking the sum of £183, being overpaid rent at the termination of the tenancy. The Respondent confirmed that he would have been responsible for the return of the deposit at

the termination of the lease, however he had been unable to identify funds being held by the Trust in this regard. He did not have access to the Trust's bank accounts and the signatories were either deceased or uncontactable. Again, it would be helpful if Mr Johnstone could provide the details of the bank account utilised by the Trust in order to assist with his investigations. If the deposit and advanced rent were still there then the Respondent could look to make a repayment.

- 9 The Respondent further advised that he required to understand the respective responsibilities of himself as the current landlord and the Trust. The Respondent confirmed meantime that he would be content to refund the overpayment of rent at the termination of the tenancy to the Applicants.
- 10 The tribunal determined to adjourn the CMD to 10 September 2024. Parties were advised of the adjourned date. The Respondent was directed to take independent legal advice and make further written representations on the question of liability. The Applicants were directed to provide the Respondent with their bank details to enable the refund of advanced rent to be made and full details of the account held by the Trust that they paid rent to be provided to the Respondent.
- 11 No written representations were received from the Respondent following the CMD.
- 12 The second CMD took place on 10 September 2024. The Applicants were both in attendance. The Respondent was not present. The Applicants confirmed that the Respondent had repaid them the sum of £183. They had also provided the Respondent with the bank details for the Trust. However there had been no further contact from him.
- 13 The tribunal attempted to telephone the Respondent however an employee of his advised that he was out of the office and unable to join the call. The tribunal therefore determined to adjourn the CMD to provide the Respondent with a further opportunity to put forward his defence to the application. The tribunal advised that if the Respondent did not attend the next CMD it would be likely that the application would be determined in his absence. A direction was issued requiring the Respondent to submit a written note of his defence no later than 14 days prior to the CMD. Notification of the CMD was given to the parties.
- 14 On 11 November 2024 the Respondent emailed the tribunal requesting a postponement of the CMD on the basis that he would be on paternity leave. The Applicants objected to the postponement on the basis of the financial hardship and inconvenience caused by the Respondent's conduct that had resulted in previous adjournments. They wished matters to be brought to a prompt conclusion.
- 15 On 26 November 2024 the tribunal wrote to parties refusing the postponement request. The tribunal noted that there had been two previous CMDs and the Applicants were entitled to proceed with the application. The Respondent was

advised that he could arrange for a representative to attend the CMD on his behalf if he was unable to do so.

- 16 On 26 November 2024 the Respondent emailed the tribunal noting the decision refusing the postponement request. He advised that he would be taking legal advice. He explained that there was no legally binding, nor active financial or inheritable connection between the Trust and his current business. He could not therefore assist with the return of the Applicants' deposit. He suggested that the tribunal could make contact with the Trust's previous representative.
- 17 The third CMD took place on 10 December 2024. The Applicants were both in attendance. The Respondent was not present, nor represented. The tribunal noted the terms of his written representations and therefore determined to proceed in his absence.

### **Findings in Fact**

- 18 The Applicants entered into a tenancy agreement regarding the property with the RAC Linzee Gordons Grandchildrens Trust which commenced on 22 July 2005.
- 19 The Applicants paid a tenancy deposit to the Trust in the sum of £800 together with advanced rent in the sum of £600. The Trust issued an invoice for said payment on 22 July 2005.
- 20 The ownership of the property transferred to the Respondent on 6 November 2013.
- 21 The Respondent is the current landlord of the property under the terms of the aforementioned tenancy agreement.
- 22 The tenancy between the parties terminated on 14 November 2023.
- 23 In terms of clause 5 of the said tenancy agreement the Respondent has an obligation to return the tenancy deposit to the Applicants in the sum of £800.
- 24 The sum of £600 paid at the commencement of the tenancy has not been applied to the rent account.

### **Reasons for Decision**

- 25 The tribunal was satisfied that it could reach a decision on the application following the case management discussions based on the application paperwork and the representations from the parties. The Respondent had been given several opportunities to fully set out his defence to the application but had not done so. In accordance with the tribunal's overriding objective to avoid delay insofar as compatible with the proper consideration of the issues the tribunal determined that it should proceed to a decision on the matter.

- 26 The tribunal was satisfied that the Respondent was the owner and landlord of the property, based on his confirmation of this at the first CMD, and the terms of the title deeds under reference ABN119342. The tribunal was therefore satisfied that the obligations under the tenancy agreement now fell upon him following the transfer of ownership of the property from the Trust in 2013. Whilst the tribunal accepted that the situation regarding the Trust's accounts was complex, nonetheless the terms of the tenancy agreement were clear in that the Respondent was duly bound to return the tenancy deposit to the Applicants as the current landlord of the property. He had provided no evidence that would justify any deductions from the amount paid. The tribunal further accepted, based on the terms of the invoice dated 22 July 2005, that the Applicants had paid the sum of £600 as advanced rent to the Trust, and were entitled to receive this back from the Respondent, again in terms of his obligations as the current landlord of the property.
- 27 The tribunal therefore determined to make an order for payment against the Respondent in the sum of £1400.

### **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.**

Ruth O'Hare

**24 January 2025**

---

**Legal Member/Chair**

---

**Date**