

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 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/24/3376

Re: Property at 43 Gadle Braes, Peterhead, AB42 1PJ (“the Property”)

Parties:

Hunting & Shooting Ltd, Goldwells House, Grange Road, PETERHEAD, AB42 1WN (“the Applicant”)

Mr John Deatcher, 43 Gadle Braes, Peterhead, AB42 1PJ (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Mary Lyden (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 £9,950 should be made in favour of the Applicant.

Background

1. By application received on 23 July 2024, the Applicant originally sought a payment order against the Respondent in the sum of £5,150 in respect of rent arrears. Supporting documentation was submitted with the application, including a copy of the tenancy agreement and a rent statement. An eviction application based on rent arrears (Ground 12) was lodged at the same time and was conjoined with this application.
2. Following initial procedure, the application was subsequently accepted by a Legal Member of the Tribunal acting with delegated powers from the Chamber President who issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations on 13 August 2024. Notification of the application was made to the Respondent, together with the date, time and arrangements for a Case Management Discussion (“CMD”) by personal service by Sheriff Officer on 31

October 2024. Written representations were to be lodged by 20 November 2024. No written representations were lodged by the Respondent prior to the CMD on 11 December 2024.

3. On 26 November 2024, the Applicant's representative lodged an application to amend both applications in respect of the increased rent arrears owing as at November 2024 of £7,550, together with an updated rent statement in support.

Case Management Discussion – 11 December 2024

4. The first CMD took place by telephone conference call at 10am on 11 December 2024, and was dealt with by different Tribunal Members. Following the commencement of the CMD at 10am, the Respondent emailed the Tribunal and the Applicant's legal representative, requesting a postponement of the CMD and explaining his reasons why this was sought. He also included some very brief representations regarding the application which were that he had been charged for dates he was not living at the tenancy property; that until earlier this year [2024] there had been no gas safety checks or smoke alarms fitted; and that there were three contracts offered this year at different rates of rent increase which were wrongly calculated. The Applicant's representative opposed the postponement request and explained the basis for this and the background to both applications. He asked for orders to be granted at the CMD. The Tribunal decided that it would not be fair or appropriate to determine either application at the CMD, given the communication received from the Respondent. The Tribunal decided to adjourn to a further CMD to give the Respondent an opportunity to attend and lodge further written representations.
5. Following the CMD, the Tribunal issued a CMD Note detailing the discussions which had taken place at the CMD, together with a Direction dated 11 December 2024 requiring both parties to lodge further representations/documentation with the Tribunal by 17 January 2025 or 14 days before the date of the next CMD, whichever date was earlier. The Respondent was required to lodge further written representations confirming his position in relation to the eviction application and clarifying/providing further detail in relation to this application regarding the rent arrears, his liability to pay same and the comments he had made in his original representations regarding the lack of safety checks. The Applicant was required to lodge the latest gas and electrical safety certificates in respect of the property and the original tenancy documentation confirming the date of commencement of the tenancy and the rent payable.

Further Procedure

6. On 16 January 2025, in response to the Tribunal's Direction, the Applicant's representative lodged a 3rd Inventory of Productions in respect of each application containing copies of a tenancy agreement dated 10 January 2021, an Electrical Installation Condition Report dated 30 April 2024, a Fire Detection and Fire Alarm Certificate dated 30 April 2024, a Gas Safety Certificate dated

11 November 2024 and an updated rent arrears statement showing the balance of arrears as £8,750 as at January 2025.

7. On 20 January 2025, the Respondent emailed the Tribunal. He apologised and stated that he had not understood the original email, that he had now had some advice from a lawyer and had some information to send which he would do by the following day. No further communication was, however, received from the Respondent the following day.
8. On 3 February 2025, the Applicant's representative emailed the Tribunal referring to the CMD which had taken place, the fact that the Respondent had not complied with the Tribunal's Direction and requesting that, in the circumstances, the Tribunal determine the applications without a further hearing in terms of Rule 18 of the Regulations. This request was considered by a Legal Member, acting as in-house convener, given that the original Legal Member was no longer available. In response, a reminder was issued to the Respondent regarding his non-compliance with the Direction. He was asked to respond within 7 days, failing which the applications would be re-considered and further procedure decided upon by the Tribunal. A copy of this communication was issued to the Applicant's representative on the same date.
9. On 11 February 2025, the Respondent emailed the Tribunal further written representations expanding slightly on his original representations regarding the lack of safety checks, him not staying in the Property for a large amount of the time during the first two years of the tenancy and suggesting that he should not be charged rent for these periods if his landlord had not complied with his legal responsibilities and the property was unsafe to inhabit. He also stated that he was given three new tenancy agreements in 2024 increasing the rent from £650 to £750 per month and then changing again twice which was confusing. He stated that he was willing to pay what is owed once it was clarified what was owed. This response was again considered by a Legal Member, acting as in-house convener and a response issued to the Respondent on 12 February 2025. The Respondent was informed that he was yet to confirm his position in respect of the eviction application and that he had not responded to the further documentation produced on behalf of the Applicant which had been circulated to him and included a copy of the relevant tenancy agreement and safety certificates in respect of the Property. His further response was requested within 14 days. He was also informed that the Legal member had instructed that a further CMD now be scheduled as soon as possible. These communications were both copied to the Applicant's representative on 12 February 2025. There was no further response from the Respondent.
10. The parties were subsequently notified on 15 February 2025 that the further CMD had been scheduled to take place on 27 March 2025 before the newly allocated Tribunal Members.
11. On 27 February 2025, a further email was received from the Applicant's representative, renewing their request for the Tribunal to consider the applications without a further hearing, albeit that a further CMD had now been

scheduled for 27 March 2025. This was requested on the basis of the Respondent's failure to further respond and also contained further representations on behalf of the Applicant, in response to the communications that had previously been received from the Respondent. These representations provided further information regarding the alleged buildings standards/safety issues, the Respondent's claims not to have been residing in the Property for periods and the explanation for the new tenancy agreement which had been issued to the Respondent. The new Tribunal Members considered this request and decided that the issues would be dealt with at the CMD. The parties were advised of this on 20 March 2025.

12. Due to delays in the cross-over of communications, the Applicant's representative had emailed the Tribunal again in the meantime, on 11 March 2025 in anticipation of the CMD going ahead. Attached were a 4th Inventory of Productions in respect of each application, being an updated rent statement showing the balance of arrears as at March 2025 as £9,950, and an application to amend both applications in that respect in terms of Rule 14A of the Regulations. This communication had been copied to the Respondent directly at the same time as it was submitted to the Tribunal.
13. On 25 March 2025, the Applicant's representative emailed the Tribunal again confirming their intention to seek orders at the CMD for eviction and a payment order in the sum of £9,950, and also to seek expenses against the Respondent in terms of Rule 40 of the Regulations. Their basis for the request for expenses was outlined in detail. This communication was circulated to the Respondent and the Tribunal Members on 26 March 2025.

Case Management Discussion – 27 March 2025

14. The continued Case Management Discussion ("CMD") took place by telephone conference call on 27 March 2025 at 10am and was attended on behalf of the Applicant by Mr Aaron Doran, Associate Solicitor, of Messrs Raeburn, Christie, Clark & Wallace and by the Respondent, Mr John Deatcher.
15. Following introductions and introductory remarks by the Legal Member, it was established that Mr Deatcher had received the Applicant's representative's most recent communication which had been circulated to him by the Tribunal yesterday. Reference was made to the previous CMD and the procedure and various communications since.
16. In respect of the rent arrears situation, Mr Deatcher explained that he has been having some difficulties over the past year or so and has had to seek assistance from his GP. He has not seen his sons in around two years and is separated from their mother but he is hopeful that he will be starting access soon as he has sorted himself out over the past few months. He would like to sort things out and retain the Property as it is a three-bedroom flat which would be good for access. Mr Deatcher explained that he has had some time off work due to

everything that had been happening. He had been overwhelmed and was not dealing with his finances, mail, etc. He accepted that his rent payments had been erratic for a long time. He explained that he is experienced in mechanical fitting and project engineering/project management and previously earned between £40,000 and £60,000 per year. He was working on shorter contracts in the oil and gas industry and then was only working on and off since April 2024. However, he has now set up his own company, is self-employed and is getting back on track. His income varies but he estimates he will be earning between £5,000 and £8,000 a month. Mr Deatcher explained that when he missed rent payments previously, he would make up the arrears by paying extra on top of his monthly rent payments but for the past year or so, he has just not been dealing with things. He was not living at the Property all the time but has now been back living there for a few months. When notice was served on him last year, he went for advice to the Council about getting a house from them and they advised him to let the eviction happen as this is the only way he would get re-housed by them. He thought the process would have been much quicker than it was and he decided to just let things go, not pay rent and let the eviction happen. However, he now feels differently and would like to sort things out with his landlord and hopefully stay in the Property.

17. Mr Deatcher was asked about the representations he had made to the Tribunal previously concerning his confusion about the fact that there was more than one tenancy agreement. Mr Deatcher explained that he had been presented with three different tenancy agreements trying to increase the rent and he had really not understood what was going on or how much rent was being claimed. He was asked about the explanation put forward by the Applicant's representative in his recent representations that there had been an error in the name of the landlord in the original agreement which was signed at the commencement of the tenancy on 1 February 2021 and he was therefore asked to sign up to a new tenancy agreement, on 16 June 2021, but that this was otherwise in exactly the same terms as the original tenancy. It was further explained that, although the landlord had tried to increase the rent subsequently, there had been a procedural defect in the process used, so the Applicant had decided to apply the original rent of £600 per month throughout the whole tenancy and is only trying to recover this amount. Reference was made to the rent statements lodged with the Tribunal which show this. Mr Deatcher accepted the position.
18. As to the safety certificates, Mr Deatcher said that he did not think his landlord had fulfilled their legal responsibilities to get the safety checks done. He was advised that if he was not staying at the Property and it was unsafe to live in, he should not be required to pay rent over those periods. Reference was made to the gas, electricity and fire alarm certificates lodged with the Tribunal on behalf of the Applicant. Mr Deatcher accepts these but said that they were not carried out until 2024 and that the Gas Safety Certificate was late 2024. No gas or other checks had previously been carried out since the start of his tenancy. Mr Deatcher said that he had asked the landlord for the gas check to be done but had never told his landlord that he was withholding rent due to the lack of safety certification. It was explained to Mr Deatcher that it is possible in such

circumstances for a tenant to withhold rent until repairs/checks are done, but that the tenant has to be able to establish that they had notified the landlord of this at the relevant time and also to demonstrate that they had put the withheld rent money aside to pay to the landlord once repairs are done. Mr Deatcher conceded that the reason for his failure to pay rent was down to the difficulties he was experiencing, referred to previously, and just letting things go. This was his only explanation for his failure to pay the ongoing rent or make any payments towards the arrears since 2024.

19. Mr Deatcher said that he wished to apologise to his landlord for his failure to deal with this situation properly for a long period of time. He now accepts that the sum claimed of £9,950 is owing. When asked if he had any payment proposals to make in respect of the arrears, he stated that he could offer £1,000 per month, which would be a payment of £400 per month in addition to the £600 rent. He confirmed his intention to resume rent payments but could not really explain why he had not already done so, or made any payments towards the arrears, despite these ongoing Tribunal proceedings. He thought he may also be in a position to make a lump sum payment of about £1,000/£1,500.
20. Mr Doran was asked if the Applicant would be agreeable to such a payment proposal. He said that he would need to take instructions from the Applicant on any such payment arrangement but that his clear instructions from the Applicant were to seek a payment order today, given the length of time the arrears have been ongoing, the amount of the arrears, and the difficulties experienced previously with the Respondent not engaging and not following through on previous payment plans. Mr Doran explained that the Respondent had previously offered to pay £300 per month towards the arrears on top of the ongoing rent but failed to make these payments. He has not made any payments towards rent since April 2024 and now owes £9,950. He has not made any effort to resolve the situation until now and has made no payments at all to demonstrate his goodwill in the matter. Mr Doran is not therefore confident that the payments being offered by Mr Deatcher will be made. He also pointed out that payments at the rate offered would, in any event, take over two years to clear the debt. Mr Doran asked the Tribunal to grant a payment order today for the whole sum sought.
21. The Tribunal adjourned to discuss and, on re-convening, advised that the Tribunal had decided to grant the payment order sought today in the sum of £9,950. It was explained that it would still be open to parties to negotiate an instalment payment arrangement between themselves.
22. Mr Doran requested that interest be added, as had been sought in the application, at the rate of 4%, which he submitted was a reasonable rate and a rate generally considered acceptable to the Tribunal. Mr Deatcher had no objection and the Legal Member confirmed that the Tribunal would apply interest at the rate of 4% which would apply from the date of the order.
23. Mr Doran also sought the expenses of the application against the Respondent. Reference was made to his detailed written representations in this regard

contained in his email lodged on 25 March 2025. Mr Doran stated that Mr Deatcher has repeatedly failed to properly explain his position in relation to the application, despite being aware what was expected of him since he was advised of the outcome of the first CMD which took place in December. He failed to respond to the Direction on time and then to properly respond to the Tribunal's reminders and further requests. Mr Doran explained that this had resulted in him having to spend more time and carry out additional work on behalf of the Applicant than would normally have been the case. He required to liaise with the Tribunal on a number of occasions and submit additional representations and documentation to try and respond to the vague representations that the Respondent did put forward. He had asked for the matter to be dealt with administratively by the Tribunal to try and avoid unnecessary procedure and another hearing. He commented that today's hearing has involved another additional hour. Mr Deatcher again confirmed that he had no objection to this and accepted the points Mr Doran had made in this regard. The Legal Member stated that it is generally only in exceptional circumstances that the Tribunal considers awarding expenses against a party, given that Tribunal proceedings generally do not attract expenses and the strict wording of Rule 40 regarding expenses. It was also explained that a party would be very unlikely to be awarded expenses in respect of the whole process or parts of the process which would generally occur in every case. Mr Doran confirmed that he was aware that Rule 40(2) only permitted "any unnecessary or unreasonable expense" and that it is unusual for him to seek expenses in a Tribunal case, but he does feel this case was exceptional. The Legal Member thanked Mr Doran for his submissions on expenses and confirmed that the Tribunal would determine the expenses issue, following the conclusion of the CMD, and would include their decision on expenses as part of their main Decision. Parties were thanked for their attendance and the CMD concluded.

Findings in Fact

1. The Applicant is the owner and the landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 1 February 2021.
3. The original tenancy agreement dated 10 January 2021 designed the landlord as Marco Mirani.
4. Marco Mirani is understood to be a Director of the Applicant company, Hunting & Shooting Ltd.
5. The correct landlord should have been the Applicant company and a subsequent tenancy agreement was entered into dated 16 June 2021, the Applicant company as the landlord, all other details remaining the same.
6. The rent in terms of the tenancy is £600 per calendar month.

7. The Applicant sought to increase the rent twice during the tenancy but subsequently became aware that there had been a defect in the procedure used.
8. Accordingly, any increases have not been included in the rent statements produced and the Applicant is not seeking to claim any increased rent from the Respondent.
9. There was a history of erratic payments being made by the Respondent and a background of rent arrears dating back to around September 2021.
10. The arrears were subsequently cleared but from around August 2023, the arrears increased steadily and only three months' rent was paid thereafter, in January, February and March 2024.
11. The last payment into the rent account was £650 in March 2024.
12. No rental payments have been received since.
13. Notice to Leave on grounds of rent arrears (Ground 12) was served on the Respondent on 20 June 2024 when the arrears amounted to £4,550.
14. When this application was lodged with the Tribunal, the arrears amounted to £5,150 and now amount to £9,950.
15. The Applicant/their agents sought to engage with the Respondent regarding the arrears on several occasions.
16. The Respondent made an offer to pay £300 per month towards the arrears in addition to ongoing rent payments during 2024 but failed to make any payments thereafter.
17. The Respondent did not make any payments, further payment offers or seek a time to pay direction in advance of the CMD.
18. The Respondent attended the CMD, explained the reasons for the rent arrears and made a verbal payment offer of £400 per month, in addition to resuming rental payments.
19. The sum of £9,950 is due and resting owing by the Respondent to the Applicant in respect of rent arrears incurred during the tenancy in terms of this application and has not been paid by the Respondent.
20. The Respondent has been called upon to make payment of the rental arrears or enter into a satisfactory payment arrangement but has failed to do so.

Reasons for Decision

1. The Tribunal considered all of the background papers, including the application and supporting documentation; further written representations and supporting documentation lodged on behalf of the Applicant; the written representations lodged by the Respondent; and the oral representations and submissions made on behalf of the Applicant, and by the Respondent, at the further CMD.
2. The Tribunal was satisfied that the applications on behalf of the Applicant to increase the sum sought during the Tribunal process had been made properly and timeously in terms of Rule 14A of the Regulations and, accordingly, the Tribunal permitted said amendments to be made.
3. The Respondent had initially questioned the amount sought in respect of the rent arrears and suggested that he should not be held liable for rent payments due during periods when he was not residing at the Property and when he claimed the Applicant was in breach of his duties to have gas and other safety checks carried out. However, the Tribunal noted that, following the detailed discussions which took place at the further CMD, the Respondent had indicated that he now accepted the explanations which had been put forward on behalf of the Applicant in regard to these matters and now accepted that the amount of £9,950 was owing. The Tribunal noted that the Applicant's explanations had been detailed in the various written representations and further supporting documentation lodged on their behalf in response to the Tribunal's Direction following the first CMD and in advance of the further CMD.
4. The Respondent indicated that he wished a further opportunity to pay the rent arrears to the Applicant and offered to pay at the rate of £1,000 per month, being the ongoing rent payments of £600, plus £400 towards the arrears. He also thought he may be able to make a lump sum payment of £1,000/£1,500 and provided some details of his current employment situation and expected income, as narrated in paragraph 19 above, relating to the further CMD. The Applicant's agent's position in respect of this offer was that the Applicant wished to be granted an order today for the full sum owed for the various reasons narrated in paragraph 20 above. The Tribunal determined that, having regard to all the circumstances and the factors outlined in the Debtors (Scotland) Act 1987, it would not be reasonable to make a time to pay direction, allowing payment by instalments, nor to continue this application to a further hearing. The Tribunal had regard to the significant level of the arrears; the background of erratic payments and arrears dating back to 2021; the lengthy periods where no rent has been paid at all and particularly that no rent payments have been received since March 2024; the lack of engagement with the Applicant or efforts by the Respondent to resolve the arrears; the previous payment proposals which were not adhered to; and that it would take a further two years or more for the arrears to be cleared at the rate offered. In the circumstances, the

Tribunal understood the position of the Applicant's agent that, given the background to this matter and the fact that the Respondent had not made any payments in advance of the further CMD, the Respondent had not demonstrated goodwill and there was no certainty that the payments offered would be made. Accordingly, the Tribunal was satisfied that a payment order in the full sum sought of £9.950 should be made at the further CMD.

5. The Tribunal considered the request on behalf of the Applicant to apply interest on the principal sum from the date of the order until payment at the rate of 4% in terms of Rule 41A of the Regulations, which request was not opposed by the Respondent. Given that interest had been requested in the original application and the current Bank of England base rate of 4.5%, the Tribunal considered the rate of 4% interest to be reasonable and determined that this should be applied.
6. The Tribunal considered the request on behalf of the Applicant to award expenses against the Respondent in terms of Rule 40 of the Regulations, which states that the Tribunal *"(1).....may award expenses as taxed by the Auditor of the Court of Session against a party but only where that party through unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense. (2) Where expenses are awarded under paragraph(1) the amount of expenses awarded under that paragraph must be the amount of expenses required to cover any unnecessary or unreasonable expense incurred by the party in whose favour the order for expenses is made."* This Rule is in furtherance of Section 64 of the Tribunals (Scotland) Act 2014 which states that *"the Tribunal may award expenses so far as allowed in accordance with Tribunal Rules"*.

The Tribunal noted the detailed representations that the Applicant's representative had made in this regard and reviewed the detail and chronology of matters. The Tribunal sympathised with the Applicant's position, given the delay in matters being brought to a conclusion and the frustration at the Respondent's failure to comply with the Tribunal's Direction following the first CMD and further requests on time or sufficiently fully, such that the Applicant was left having to 'second-guess' what the Respondent's position was in respect of the applications. The Tribunal also took into account the fact that the Respondent himself did not dispute expenses being awarded. However, the Tribunal decided that it would not be reasonable to grant expenses in respect of either application, even partial or limited expenses which is what was being sought by the Applicant. The Tribunal did not consider that the Respondent's conduct amounted to *"unreasonable behaviour in the conduct of the case"* such that these applications would justify an exception being made to the general rule that expenses will not be awarded in Tribunal proceedings. This was not a case where the Respondent did not answer the Tribunal at all. He had

submitted written representations on the morning of the CMD to both the Tribunal and the Applicant's representative, albeit very brief and not particularly clear. He did fail to respond on time to the Tribunal's Direction but did submit an email on 20 January 2025 explaining that he had not understood the original communication, had taken advice and would respond the following day, albeit that he did not then further respond. However, on being issued further reminders by the Tribunal, the Respondent did then further respond on 11 February 2025, providing further detail regarding his position, albeit not answering all points required. In the Tribunal's view, the Respondent had raised legitimate issues in respect of the tenancy agreements, rent increases and safety checks which he was entitled to do. The Respondent had then attended the further CMD and explained his position in detail, as well as explaining his earlier failings and apologising. The Tribunal does accept that the Applicant's representative did correspond with the Tribunal numerous times between the two CMDs (as detailed above) and that there was perhaps more procedure involved during this stage than in the 'standard' Tribunal case. However, the Tribunal does not consider that this was necessarily all caused by the conduct of the Respondent. It was the Tribunal at the first CMD that determined that it was appropriate, in the circumstances, to continue to a further CMD. There was a change in Tribunal Members due to one of the original members no longer being available. There is a backlog in cases currently being adjourned to further CMDs and hearings, due to volume, so some of the delay here was attributable to that. The Applicant required to respond to the Tribunal's Direction, given the issues raised by the Respondent in his representations on the date of the first CMD and did so. The Applicant lodged two applications to increase the rent arrears claimed and rent statements supporting this. The Applicant emailed on 27 February 2025 with further representations, further explaining the issues which had been raised by the Respondent in representations. The Applicant's request to have the applications determined under Rule 18 was legitimately made but the Tribunal determined that the issues should be considered at the further CMD. There was a delay on the part of the Tribunal Administration in crossing over the Tribunal's response to this request, which had resulted in the Applicant sending in a further communication on 11 March 2025. The Applicant had lodged a further communication two days before the further CMD containing the submissions that they intended to put forward at the further CMD, particularly with regard to their claim for expenses. The Tribunal considered that this was good practice as it provided prior notification to the Respondent and the Tribunal. All in all, the Tribunal considered that much of the documentation lodged by the Applicant had been lodged at their option but also that it had served its purpose in that it enabled the Tribunal to determine both applications at the further CMD stage, thereby avoiding further Tribunal procedure or the need for an Evidential Hearing. The timeous applications for an increase in the sum sought in respect of the

payment application also meant that the Tribunal was able to grant a payment order in respect of the up-to-date arrears balance.

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.

Nicola Weir

Legal Member/Chair

27 March 2025
Date