



Decision with Statement of Reasons 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/19/0390

**Re: Property at Upper Flat Cobbler Brae, The Cross, Errol, Perthshire, PH2 7QR
 (“the Property”)**

Parties:

**Mrs Jillian Heather Martin and Mr John Gordon Martin, Glenearn Gas Brae, Errol, Perthshire, PH2 7QR
 (“the Applicants”)**

**Blackadders LLP, 6 Bon Accord Square, Aberdeen, AB11 6XU
 (“the Applicants’ Representative”)**

**Mr Christopher Cullen, Upper Flat Cobbler Brae, The Cross, Errol, Perthshire, PH2 7QR
 (“the Respondent”)**

Tribunal Members:

Susanne L M Tanner Q.C. (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that the Respondent should pay to the Applicants the sum of TWO THOUSAND TWO HUNDRED POUNDS (£2200.00) STERLING; and made an Order for Payment in respect of the said sum.

1. Procedural background

- 1.1. The Applicants' Representative made an Application to the tribunal on 5 February 2019 in terms of Section 16 of the 2014 Act and Rule 111 of the 2017 Rules, seeking an order for payment against the Respondent in the sum of £1100.00 in respect of rent arrears.
- 1.2. The Application documentation submitted by the Applicant comprised:
 - 1.2.1. A copy of a Private Residential Tenancy Agreement between the First Applicant and the Respondent for the Property dated 21 June 2018; and
 - 1.2.2. A copy of a rent account for the Respondent and the Property for the period 22 June 2018 to 17 August 2018;
- 1.3. On 7 February 2019 the Application was placed on hold to allow the Applicant to provide further information in relation to a related application EV/19/0255.
- 1.4. On 21 February 2019, the Application was accepted for determination by the tribunal.
- 1.5. On 25 February 2019 the tribunal wrote to the Applicants' Representative stating that she should be prepared to address the tribunal on why Jillian Heather Martin is a sole Applicant given that the Property is owned by Ms Martin and Mr John Gordon Martin, inviting the Representative to make any request to amend the Application as soon as possible, together with the provision of the necessary letters of authority or his contact details.
- 1.6. On 28 February 2019 the Applicants' Representative moved to amend the Application to add Mr John Gordon Martin as a second Applicant; and produced letters of authority, on the basis that Mr Martin was a joint owner of the Property and as such had an interest in the proceedings although he was not named on the PRT lease.
- 1.7. On 14 March 2019, parties were notified of the date, time and place of a Case Management Discussion ("CMD") on 5 April 2019 at 1000h at The Inveralmond Business Centre, Auld Bond Road, Perth. The Respondent was invited to submit written representations to the Application by 1 April 2019. The Respondent was personally served by Sheriff Officers with the Application documentation and notice of the date, time and place of the CMD.

- 1.8. No written representations were submitted by the Respondent in advance of the CMD on 5 April 2019.
- 1.9. On 18 March 2019 the Application in this and the related eviction Application were amended to add Mr John Gordon Martin as the Second Applicant.
- 1.10. By letter of 26 March 2019 the Applicant's Representative submitted an updated rent statement and a request to amend the Application, Section 5(c) to seek a payment order of £2,200. The letter was sent to the Respondent by the tribunal on 4 April by normal mail.
- 1.11. A CMD took place on 5 April 2019 in relation to this Application and the related eviction Application EV/19/0255. Reference is made to the Notes of the CMD in relation to this Application. A local solicitor, Ms Sally McCartney, was instructed by the Applicants' Representative to attend on behalf of the Applicants at the CMD. The Respondent did not attend. The tribunal allowed the Applicants' Representative to amend the sum claimed. However, because the requisite period of 14 days' notice of the amendment of the sum claimed had not been given to the tribunal and the Respondent, the tribunal adjourned the CMD to 2 May 2019 for the purpose of allowing the Respondent the opportunity to make representations to the tribunal on the amended sum claimed.
- 1.12. At the CMD in the related eviction action on 5 April 2019, the tribunal made an eviction order under Ground 1 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016, which is not to be executed before 12 noon on 8 May 2019.
- 1.13. The Notes of the CMD were sent to the Respondent by the tribunal by recorded delivery. The tribunal's administration confirmed that Royal Mail tried to deliver the parcel on 16 April 2019 but nobody was in the Property. Royal Mail left notification at the Property and as at 2 May 2019 the parcel remains at the Post Office awaiting delivery.
- 1.14. On 16 April 2019 the tribunal notified parties of the date, time and place of a Case Management Discussion on 2 May 2019 at 1000 in The Inveralmond Business Centre, Auld Bond Road, Perth and parties were notified that they were required to attend. The Respondent was personally served by Sheriff Officers on 17 April 2019 by depositing the papers through the letter box at the Property, the Sheriff Officers having

received no answer and thereafter confirming the Respondent's residence with a neighbour.

2. CMD – 2 May 2019 at The Inveralmond Business Centre, Auld Bond Road, Perth

2.1. Ms Sally McCartney from Kippen Campbell, 48 Tay Street, Perth, attended the CMD, as local agent for the Applicants' Representative.

2.2. The Respondent did not attend the CMD or make any contact with the tribunal, its administration or the venue. The tribunal was satisfied on the basis of the Sheriff Officer's execution of service that the requirements of Rule 24(1) of the 2017 Rules regarding the giving of notice of a hearing had been duly complied with and proceeded with the Application upon the representations of the Applicants' Representative and the material before it, in terms of Rule 29 of the 2017 Rules.

2.3. At the CMD, the tribunal chair raised the issue of amendment of the Application to increase the sum claimed. Rule 14A of the 2017 Rules provides that:

(1) Where a new issue is not raised, a party may request to amend the Application including the sum claimed by intimating the amendment to any other party and the First-tier Tribunal at least 14 days prior to a CMD or hearing. (2) The First-tier Tribunal may consent to the amendment on such conditions, if any, as the First-tier Tribunal thinks fit."

2.4. The tribunal Chair asked Ms McCartney whether she had intimated the request to amend the sum claimed to the Respondent and if so, by what method. The tribunal chair advised Ms McCartney that the tribunal had forwarded the Applicants' Representative's letter requesting amendment and the updated rent statement on 4 April 2019, although there was no proof of receipt as it had been sent by normal mail; and that there had been a failure in delivery of the Notes of the CMD by recorded delivery.

2.5. Ms McCartney provided a copy of an email dated 3 April 2019 sent by Nicola Brown of the Applicants' Representative to the Respondent at Chris.Cullen.18@hotmail.com and copied to the tribunal's administration, which attached a copy of the letter to the tribunal dated 26 March 2019 seeking amendment of the Payment Order application and the updated rent schedule. Ms McCartney advised the tribunal chair that all notices

served previously have been served on the Respondent on behalf of the Applicants at this email address, which is the Respondent's specified email address on the PRT, Section 3, clause 1. The Communication section of the PRT provides that all communications which may or must be made under the Act and in relation to the agreement, including notices to be served by one party on the other will be made in writing using hard copy personal delivery or recorded delivery; or the email addresses set out in Clauses 2 or 3 and 1. Ms McCartney stated that the said email of 3 April 2019 had been produced at the previous CMD on 5 April 2019 and the Legal Member on that date had calculated the notice period having regard to that document, although the document itself was not mentioned in the Notes of the CMD.

- 2.6. Despite the fact that there was no proof of service of the tribunal's letter to the Respondent of 4 April 2019 and the fact that the Notes on the CMD had not been delivered to the Respondent due to a failed recorded delivery, the tribunal chair was satisfied on the basis of the email of 3 April 2019 notifying the Respondent of the updated rent arrears position and the Applicants' Representative's request for amendment of the Application that the Respondent had received the necessary intimation of the request to amend the Application to increase the sum claimed, at least 14 days prior to the CMD on 2 May 2019.
- 2.7. The tribunal also had regard to the fact that there is it has an execution of service on the Respondent by Sheriff Officers on 17 April 2019 of the notification of the CMD and there has been no response by the Respondent despite the opportunity to do so, nor has he appeared at the CMD on 2 May 2019 despite being told that he required to attend.
- 2.8. The tribunal Chair asked Ms McCartney whether she was aware if the Applicant had now left the Property and, if so, when. Ms McCartney stated that the instructing agents have not provided an update on that regard. She is proceeding on the basis that the Respondent remains in situ in the Property and will likely do so until the eviction order is granted.
- 2.9. The tribunal Chair proceeded to ask the Applicant's Representative about the sum claimed in the Application. The arrears figure of £2,200.00 shown on the rent statement includes rent in advance for the period to 24 April 2019. Although an eviction order has been issued it is not to be executed prior to 8 May 2019. On the basis that the Respondent remains in the Property she submitted that all of the arrears claimed are lawfully due.

2.10. Ms McCartney moved for a payment order the sum of £2,200 in favour of the Applicants, submitting that it was supported by the rent statement to 24 April 2019.

3. Findings-in-Fact

3.1. In terms of a Private Residential Tenancy agreement between the parties in respect of the Property dated 21 June 2018, the start date of the tenancy was 25 June 2018.

3.2. Rent is payable by the Respondent to the Applicants at the rate of £650.00 for the period 25 June 2018 to 24 July 2018 and thereafter from 25 July 2018 to the end of the tenancy at the rate of £550.00 per calendar month, payable in advance on 25th day of each calendar month.

3.3. The Respondent remains in the Property as at 2 May 2019.

3.4. The rent arrears as at 24 April 2019 amounted to £2,200.00.

3.5. The Respondent has not made any payments to the Applicant in the period since 24 April 2019.

4. Discussion

4.1. As the tribunal was satisfied that the Respondent owes £2200.00 to the Respondent by way of rent arrears to 24 April 2019, the tribunal made an Order for Payment in respect of the rent arrears in the sum of £2200.00.

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.

S Tanner

2 May 2019

**Susanne L M Tanner Q.C.
Legal Member/Chair**