



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) concerning application at the request of the Applicant to review a decision made by it dated 29th January 2021, which application is made in terms of Rule 39 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended

Chamber Ref: FTS/HPC/CV/20/1169

Re: Property at 1/2 11 Mains Road, Beith, Ayrshire, KA15 2AR (“the Property”)

Parties:

Mrs Anne Nimmo, Pirnie Lodge Farm, Slamannan, Falkirk, FK1 3DJ (“the Applicant”)

Miss Charly Anne McDonald, formerly residing at 1/2 11 Mains Road, Beith, Ayrshire, KA15 2AR, and whose current whereabouts are unknown (“the Respondent”)

Tribunal Member:

Neil Kinnear (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

This was an application dated 12th May 2020 and brought in terms of Rule 111 (Application for civil proceedings in relation to a private residential tenancy) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant sought in her application payment of arrears in rental payments of £766.39 in relation to the Property from the Respondent, and provided with her application copies of the private residential tenancy agreement, notice to leave with execution of service, rent schedule and other correspondence.

The tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*.

The Respondent could not be validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal, as when service was attempted by Sheriff Officers, they found the Property apparently empty.

Thereafter, service was validly effected by advertisement in terms of Rule 6A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, and the Tribunal was provided with the Certificate of Service by advertisement.

By e-mail to the Tribunal of 9th October 2020, the Applicant's representative sought to amend the sum sought to £2,065.57, and provided a rent arrears calculation and further information therewith.

A Case Management Discussion was held at 10.00 on 23rd October 2020 by Tele-Conference. The Applicant did not participate, but was represented by Mr Harris, solicitor. The Respondent did not participate, and was not represented. The Respondent had not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

Mr Harris explained that the Applicant did not know the date when the Respondent abandoned the Property. After being advised by the Tribunal that it had been unable to serve papers on the Respondent at the Property, the Applicant had investigated and resumed possession on 6th October 2020. The Respondent's current whereabouts are unknown.

Mr Harris noted that the Respondent has not claimed the tenancy deposit, and he was in the process of confirming with the Applicant as to whether the deposit was to be released to the landlord, and if so, whether all or some of that (depending on whether any of it required to be used to pay the cost of cleaning or repair) might be used to pay some of the outstanding rent.

Mr Harris explained that the rent arrears statement to 6th October 2020 in fact showed that arrears total £2,000.00 and not £2,065.57, and that he understood that the former was the correct figure.

Mr Harris asked the Tribunal to adjourn the Case Management Discussion for the purpose of allowing him to confirm the position with regard to repayment of the tenancy deposit, and thereafter for him to provide the Tribunal with a final updated rent arrears calculation taking account of any sum recovered from the deposit.

The Tribunal considered Mr Harris's submission to be reasonable in the circumstances, and consistent with the overriding objective of the Tribunal to deal with proceedings justly and in a manner which is proportionate to the complexity of the issues and the resources of the parties in terms of Rule 2 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

Rule 28 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended allows the Tribunal discretion on an application by a party to adjourn a hearing on cause shown.

The Tribunal considered that the Applicant had shown there is good reason why an adjournment was necessary, in order to allow her to clarify the sum sought in her application to reflect the rental arrears which are outstanding as at the date when the Respondent quit the Property.

It seemed only just that the Applicant be given an opportunity to do so, and the Tribunal accordingly exercised its discretion to adjourn the Case Management Discussion to a further date.

By e-mail to the Tribunal of 19th January 2021, the Applicant's representative advised that the sum sought in this application was £1,715.57, being the rent arrears to the date when the Applicant regained possession of the property under deduction of the tenancy deposit which had been paid to her, and provided a rent arrears calculation and further information therewith.

A continued Case Management Discussion was held at 10.00 on 29th January 2021 by Tele-Conference. The Applicant did not participate, but was again represented by Mr Harris, solicitor. The Respondent did not participate, and was not represented. The Respondent had not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Tribunal was invited by Mr Harris with reference to the application and papers to grant an order for payment of the sum of £1,715.57 with interest thereon in terms of Rule 41A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Tribunal made an order for payment by the Respondent to the Applicant of the sum of £1,715.57 with interest thereon at the rate of three per cent per annum from the date of the decision of the Tribunal until payment.

Application for Review at the Request of the Applicant

On 5th February 2021, the Applicants' representative e-mailed the Tribunal requesting that the Tribunal amend its decision and order to designate the Respondent as "Charly

McDonald”, as it was apparently unclear if the Respondent’s middle name was “Anne” or not.

The Tribunal responded noting that firstly, the Tribunal only has power to correct clerical mistakes and accidental slips or omissions contained in a decision or order, and has no power to alter those by request unless a review is sought, and secondly that even if the Respondent’s middle name was incorrect, her designation was arguably still sufficient to identify her.

In response, on 11th February 2021 the Applicant’s representative e-mailed the Tribunal requesting that the Tribunal review its decision for the purpose of deleting the Respondent’s middle name from its decision and order.

Reasons for Decision

Rule 39(1) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended provides that the Tribunal may at the request of a party review a decision made by it where it is necessary in the interests of justice to do so.

Rule 39(2) provides that an application for review (a) must be made in writing and copied to the other parties, (b) be made within 14 days of the date on which the decision is made or within 14 days of the date that the written reasons were sent to the parties, and (c) set out why a review of the decision is necessary.

The application for review was made in writing, made within 14 days of the date on which the decision was made, and sets out why a review of the decision is necessary.

Albeit the Tribunal considers that the Respondent’s designation is likely to be legally sufficient to properly identify her, it appreciates that the Applicant has concerns about that issue and wishes the decision and order amended to delete the middle name “Anne”.

The Tribunal notes that the lease agreement and the tenancy deposit paperwork both designate the Respondent as “Charly McDonald”, and do not mention any middle name.

As the current whereabouts of the Respondent remain unknown, the Tribunal effected service of this application by advertisement in terms of Rule 6A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, and the Tribunal was provided with the Certificate of Service by advertisement.

Decision

In those circumstances, the Tribunal will review its decision and order of 29th January 2021 by deleting the middle name “Anne” from the Respondent’s designation.

A black rectangular redaction box covering the signature of Neil Kinnear.

Neil Kinnear

Legal Member/Chair

13 May 2021

Date