



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Housing (Scotland) Act 2014**

**Chamber Ref: FTS/HPC/CV/19/2014**

**Re : Property at 91 Honeywell Crescent, Chapelhall, North Lanarkshire ML6 8XW (“the Property”)**

**The Parties:-**

**Barry Hart, 15 Burn Crescent, Chapelhall, North Lanarkshire ML6 8TS (“the Applicant”)**

represented by Michael Ritchie, Anderson Strathern, Solicitors, 5<sup>th</sup> Floor, Atlantic Chambers, 45 Hope Street, Glasgow G2 6AE

**Ms Karen Owens, residing or formerly residing at 91 Honeywell Crescent, Chapelhall, North Lanarkshire ML6 8XW (“the Respondent”)**

**The Tribunal comprised:-**

Mr David Bartos - Legal member and Chairperson

**DECISION**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent shall pay to the Applicant the sum of EIGHT THOUSAND ONE HUNDRED POUNDS (£8100.00) STERLING.

**Background**

1. In March 2018 the parties entered into a private residential tenancy of the Property with the Applicant as landlord and the Respondent as tenant. The Applicant seeks an order for payment of rent by the Respondent.

2. A second case management discussion (“CMD”) took place on 14 October 2019 at 10.00 hrs at the Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The Applicant’s representative Michael Ritchie of Anderson Strathern, solicitors appeared. There was no appearance by or on behalf of the Respondent. The Tribunal noted that Notice of the CMD at to-day’s date had been given to the Respondent in a letter from the Tribunal dated 18 September 2019 which had been served on her by recorded delivery post on 20 September 2019 as per the Royal Mail Track and Trace certificate of delivery. The Tribunal proceeded with the CMD. It took the view that in all the circumstances it was not unfair to the Respondent to proceed with the CMD and that it would be unfair to the Applicant for there to be delay. No written representations had been received by the Tribunal from the Respondent.
3. The hearing followed on from the CMD on 28 August 2019. The Notes of the CMD were sent to the Applicant’s representative and to the Respondent by letters from the Tribunal’s Casework Officer dated 13 September 2019. That to the Respondent was sent by recorded delivery and was signed for by the Respondent.
4. These Notes of the CMD on 28 August 2019 are referred to for their terms. The Notes from the CMD set out the procedural background prior to the CMD. They also identified a number of disputed issues.
5. On 23 September 2019 the Applicant’s representative lodged with the Tribunal :-
  - Copy death certificate for Margaret Melville extracted on 13 September 2019 recording her death on 21 January 2014
  - Copy letter from Yvonne Graham, Home Manager of Forthbank Care Home, Drip Road, Stirling dated 17 September 2019 confirming that Margaret Melville of 91 Honeywell Crescent, Chapelhall, Lanarkshire was a resident at the home until she passed away on 21 January 2014

***Facts Not in Dispute Between the Parties***

6. Having considered all the evidence, the Tribunal found the following facts to be established:-
  - (a) On 5 March 2018 the Applicant granted a written private residential tenancy of the Property to the Respondent (“the Lease”). Lease commenced on 1 March 2018.

- (b) The Lease provided for the payment by the Respondent to the Applicant of rent of £600 per month payable in advance on the 1st day of each month. The Lease has continued in force.
- (c) The Applicant had become owner of the Property under burden of the interest of a life interest in the Property. The life interest was Margaret Melville. She had died on 21 January 2014;
- (d) The date of entry under the Lease was 1 March 2018;
- (e) The Lease provided for the payment by the Respondent to the Applicant of "rent" of £600 per month payable in advance on the 1st day of each month. It also provided for payment by the Respondent of a deposit of £600. The Lease has not been terminated. The Respondent remains in occupation of the Property.
- (f) The Respondent has paid none or only part of the sums due from May 2018 to June 2019 under the Lease.
- (g) The total amount of sums due and unpaid up to the period ending 1 June 2019 under the Lease is £8,100 in terms of the Applicant's statement of rent.
- (h) The Respondent has not made any payment to the Applicant since 22 May 2018.
- (i) On 28 June 2019 the Applicant applied to the Tribunal for an order for payment of the sum of £8,700. The sum of £8,100 remains due and unpaid.

***Reasons for Decision***

7. The Tribunal required to decide :

- (A) whether the Applicant had title to seek rent from the Respondent;
- (B) whether the Applicant had interest to seek rent from the Respondent;
- (C) the amount of any rent which remained due and unpaid.

***The Applicant's title and interest.***

8. Issues (A) and (B) fell to be considered together. The Tribunal was satisfied that the death certificate of Margaret Melville applied to the life interest of the Property as set out in the Applicant's title. Mrs Melville's interest having been brought to an end on her death, it followed that the

Applicant as owner of the Property was the person with the sole interest as landlord in any tenancy and particularly one granted after her death.

9. As the Applicant had an interest in seeking payment of rent under the Lease without any competing liferent interest, the Tribunal was satisfied that he had both title and interest to present the application.
10. The Tribunal noted that it would be in the interests of all if the Applicant could proceed to rectify the Land Register to have Mrs Melville's interest removed from the register so that any person looking at it in the future would not think, as the Tribunal did, that a liferent still existed.

#### *Rent due and unpaid*

11. At the first CMD on 28 August 2019 Mr Ritchie accepted that the first item in the rental statement was an unpaid deposit which was not part of the claim. This meant that the claim was truly for £8,100 being the whole amount of rent due and unpaid up to 1 June 2019. He confirmed that no further payment had been made since that date. At the second CMD he confirmed that no further payment of rent had been made since the first CMD.
12. The Tribunal considered the application, Mr Ritchie's submissions and the documentary evidence submitted on behalf of the Applicant. It found that it was able to make sufficient findings in fact and that to do so was not contrary to the interests of the parties. It was therefore able to decide the case at the CMD without a hearing. It could see no benefit to be gained from a further hearing which would cause delay.
13. The Tribunal was satisfied that no doubt was cast on the documentary evidence or submissions made by Mr Ritchie. On that basis the Tribunal made the findings in fact set out above.
14. The Tribunal accepted that there had been a breach by the Respondent of her duty to pay the rent under the Lease and that the amount of £8,100 remained unpaid. That did not cover any instalments of rent that might be due after 1 June 2019. In the circumstances the Tribunal made the decision set out above.

#### *Outcome*

15. The First-tier Tribunal for Scotland (Housing and Property Chamber) orders the Respondent to pay to the Applicant the sum of Eight Thousand One Hundred Pounds (£8100.00) Sterling.

#### *Right of Appeal*

16. In terms of section 46 of the Tribunals (Scotland) Act 2014 a party

aggrieved by the decision of the Tribunal may seek to 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.

**NOTE:** This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to tribunal members in relation to any future proceedings on unresolved issues.

**D Bartos**

2019

Legal Member

14 October

Date