



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 71(1) of the Private Housing
(Tenancies) (Scotland) Act 2016**

Chamber Ref: FTS/HPC/CV/21/0373

**Re: Property at Flat 0/1, 82 Eastwood Avenue, Shawlands, Glasgow, G41 3NY
("the Property")**

Parties:

**Ms Sharon Elaine Shear and Ms Joanna Rachel Shear, 47 Southwood Lane,
Highgate Village, London, N6 5ED as Executors of the estate of Ms Anne Morris
("the Applicants")**

Mr Peter Cooper, UNKNOWN, UNKNOWN ("the Respondent")

Tribunal Members:

Valerie Bremner (Legal Member)

Decision in absence of the Respondent

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that a payment order in the sum of Eleven Thousand Four
Hundred and Seventy One Pounds and Eighty Six pence (£ 11471.86) be made
against the Respondent and in favour of the Applicants.**

Background

1.This is an application for a payment order in terms of Rule 111 of the Tribunal Rules of procedure. The application was first lodged with the Tribunal on 17 February 2021. The application was accepted by the Tribunal on 4 March 2021.

2.The Tribunal fixed a case management discussion for 24 May 2021 at 11:30 am. This was postponed at the request of the Applicants' representative. The application when first lodged ran in the name of Ms Sharon Elaine Shear as attorney for Ms Anne Morris, the landlord in terms of the tenancy agreement. By email dated 20th May 2021 the Applicants' representative intimated that the that Ms Morris had died on 13 May 2021 and as such the power of attorney was no longer in force. A postponement was

granted to allow enquiries to be made into the names of the executors appointed by Ms Morris in terms of her will. A new case management discussion was fixed for 6 July 2021 at 10 am.

Case Management Discussion

3. At the case management discussion on 6 July 2021 the Applicants were represented by Miss Morrison, solicitor of TC Young solicitors Glasgow. There was no appearance by or on behalf of the Respondent. The application had been the subject of service by advertisement in terms of Rule 6A of the Tribunal rules of procedure since 28th May 2021 as attempts to serve the Application at the property had been unsuccessful and the Respondent's current address is unknown. Miss Morrison requested that the Tribunal proceed in his absence. The motion was granted as the Tribunal was satisfied that appropriate intimation of the case management discussion had been made to the Respondent in reasonable time in terms of the Tribunal Rules.

4. At the case management discussion the tribunal had sight of the application, a paper apart, a copy of a registered power of attorney, a private residential tenancy, copies of pages of a will, a rent statement, copies of correspondence sent to the Respondent, email representations dated 16 June 2021, a copy of a letter e mailed to the Respondent and a copy of a death certificate.

5. Miss Morrison requested that the Tribunal permit amendment of the application in terms of Rule 14 of the Tribunal rules of procedure. The application had originally run in the name of Ms Sharon Elaine Shear as attorney for Ms Anne Morris. Miss Morrison confirmed that the landlord in terms of the private residential tenancy Ms Anne Morris had died on 13 May 2021 and the Applicants had exhibited a copy of her death certificate. As a result Ms Sharon Elaine Shear was no longer acting in terms of a power of attorney granted by Ms Morris, but as an executor of the estate of Ms Morris. Miss Morrison wished to amend the application to run in the name of Ms Sharon Elaine Shear as executor and also Ms Joanna Rachel Shear who was also an executor named in the will of Ms Anne Morris. The Tribunal had sight of the relevant parts of the will confirming the appointments.

6. Although there was no current address known for the Respondent Mr Peter Cooper the Tribunal had sight of a letter sent by email to the Respondent by the Applicants' representative dated 16th June 2021 indicating that the request to amend the application to run in the names of the two executors would be made at the case management discussion on 6th July. As there had been no response or appearance by Mr Cooper the Tribunal was satisfied that it was appropriate to allow the amendment of the names of the Applicants in terms of Rule 14 of the Tribunal rules of procedure, and that appropriate intimation had been made to the Respondent as far as was possible and this had been effected more than 14 days before the case management discussion on 6 July 2021.

7. Miss Morrison also requested to amend the amount to be sought in terms of the application to the sum of £11,766.86. This request to amend the sum being sought in terms of the application had been intimated by email to the Respondent on 16th June in the same letter as described in paragraph 6 above. The Tribunal considered that the terms of Rule 14A of the Tribunal rules of procedure had been complied with in this regard and that it was appropriate to allow amendment of the sum being requested.

8. On consideration of the rent statement produced by the Applicants' representative it was apparent that there was a double entry for rent said to be due on 9 June 2020 and the total sum actually being requested was £11,471.86.

9. Miss Morrison advised the Tribunal that the Respondent had occupied the property prior to the commencement of a private residential tenancy on 9 February 2018. The monthly rent payable in respect of the private residential tenancy was £295. The Respondent had left the property at some time earlier in 2021 and it had been secured by the Applicants on 6 May 2021. No rent had been paid since the start of the tenancy and the sum being requested was for outstanding rent up to 6th May 2021. Miss Morrison advised the Tribunal that the deceased landlord Ms Morris had been elderly and it was not clear what efforts had been made to address the unpaid rent before the involvement of Ms Sharon Elaine Shear in terms of the power of attorney which was granted in her favour on 19 December 2019. After Miss Shear had become the attorney for Ms Morris she had made efforts to try to recover the unpaid rent but these efforts had been unsuccessful. The payment order was therefore necessary.

10. The Tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

11. The Respondent entered into a private residential tenancy agreement at the property with Ms Anne Morris with effect from 9 February 2018.

12. The monthly rent payable in respect of the tenancy agreement was £295.

13. The Respondent vacated the property and the Applicants secured possession of the property with effect from 6 May 2021.

14. No rent was paid by the Respondent during the private residential tenancy at the property.

15. On 19 December 2019 Ms Anne Morris appointed Ms Sharon Elaine Shear as her attorney in terms of a registered power of attorney.

16. Ms Sharon Elaine Shear as attorney for Ms Anne Morris made efforts to recover unpaid rent from the Respondent but these were unsuccessful.

17. On 13 May 2021 Ms Anne Morris died and Ms Sharon Elaine Shear and Ms Joanna Rachel Shear are appointed as executors in terms of her will and the application for the payment order runs in their names as executors of her estate.

18. The rent outstanding in respect of the tenancy at the property up to 6th May 2021 is £11,471.86.

19. The sum of £11,471.86 is lawfully due by the Respondent to the Applicants as executors of the estate of the late Ms Anne Morris.

Reasons for Decision

20. The Tribunal was satisfied that it was appropriate to make a payment order in respect of the unpaid rent in relation to the private residential tenancy agreement at the property between the late Ms Anne Morris and the Respondent. No rent had been paid during the period of the tenancy and despite efforts by the late Ms Morris's attorney to recover the rent, this had been unsuccessful. The Respondent had vacated the premises without paying rent and his current address is unknown. It was

therefore reasonable to grant the payment order in favour of the executors of the estate of the landlord.

Decision

The Tribunal determined that a payment order in the sum of Eleven Thousand Four Hundred and Seventy one Pounds and Eighty Six pence (£ 11471.86) be made against the Respondent and in favour of the Applicants.

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.

Legal Member/Chair

6.7.21_____
Date