



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber)**

**Chamber Ref: FTS/HPC/CV/21/0284**

**Property: 63 Highfield, Forbeshill, Forres IV36 1FN ("Property")**

**Parties:**

**Niall Hamilton, as Executor on the estate of the late Morag Stevenson Hamilton, 122 Woodstock Avenue, Shawlands, Glasgow G41 3QY ("Applicant")**

**Cluny Estate Agents, 91 High Street, Forres IV 36 1AA ("Applicant's Representative")**

**Amanda Larcombe and Murray McLennan, 63 Highfield, Forbeshill, Forres IV36 1FN ("Respondents")**

**Tribunal Members:**

**Joan Devine (Legal Member)**

**Tony Cain (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("Tribunal") determined that an order for payment should be made.**

**Background**

The Applicant sought an order for payment of £11,350 in respect of arrears of rent. The Applicant had lodged Form F. The documents produced were: Short Assured Tenancy Agreement signed by the Applicant's Representative and the Respondents dated 22 May 2015; a statement of account regarding rent due for the Property for the period 25 March 2015 to 3 February 2021 and Confirmation docketed by the Sheriff Clerk at Glasgow on 15 June 2021 in respect of the estate of the late Morag Stevenson Hamilton. The Respondents had submitted an application for time to pay under the Debtor's (Scotland) Act 1987 at the rate of £100 per week. The application was dated 8 April 2021. The Applicant had submitted a response dated 22 April 2021 in which he indicated that he accepted the proposal for time to pay.

### **Case Management Discussion ("CMD") on 2 June 2021**

A CMD took place on 2 June 2021 alongside an application for a Possession Order under reference EV/21/0283. The Applicant's Representative told the Tribunal that the Applicant had entered into the tenancy agreement under a Power of Attorney granted by his late mother, Morag Stevenson. The Tribunal noted that title to the Property was in the name of Colin McDonald Hamilton and Morag Hamilton. The Tribunal continued the CMD for further information to be produced regarding :

1. In what capacity the Applicant sought the order.
2. If the Applicant was acting as executor, whether the application should be amended.
3. Clarification of who holds title to the Property.

### **CMD on 15 July 2021**

A further CMD took place by conference on 15 July 2021. In advance of the CMD the Applicant's Representative provided to the Tribunal copy certificate of registration of Power of Attorney dated 4 November 2010 by Morag Stevenson Hamilton in favour of Niall McDonald Hamilton and Kirsten Rina Hamilton and email from Kirsten Berezanskij stating that she consented to the Applicant continuing with this application. The Applicant's Representative advised that Colin McDonald Hamilton had died on 12 October 2005.

The rent statement produced showed arrears of rent as at 28 January 2021 of £11,350. The Confirmation narrated that Morag Stevenson Hamilton had died on 23 December 2018. Her executors were the Applicant and Kirsten Berezanskij.

At the CMD the Applicant was represented by Rebecca Garner of the Applicant's Representative. Both of the Respondents were present. Ms Garner told the Tribunal that further rent had fallen due since January 2021 and the Respondents had made payments towards that of £2600. The arrears now stood at £12,350. Mr McLennan agreed that the arrears were now £12,350. The Tribunal noted that no application had been made to amend the sum claimed.

### **Findings in Fact**

The Tribunal made the following findings in fact:

1. The Applicant and the Respondents had entered into a tenancy agreement dated 22 May 2015.

2. The tenancy was for the period 22 May 2015 to 22 November 2015 and unless terminated would continue thereafter on a month to month basis.
3. The rent in terms of the tenancy agreement was £600 per month.
4. The Applicant held power of attorney from the proprietor of the Property on the date on which the tenancy agreement was entered into.
5. At the date this Application was made, the Applicant was executor on the estate of the proprietor of the Property.
6. The joint executor, Kirsten Berezanskij, had consented to the Application proceeding.
7. As at 28 January 2021 rent totalling £11,350 was due in terms of the tenancy agreement.

### **Reasons for the Decision**

Rent was due in terms of the tenancy agreement at the rate of £600 per month. Rent for the period 22 December 2017 to 28 January 2021 had not been paid. There was no dispute as to the level of rent arrears. The Tribunal determined to make an Order for payment of the outstanding rent as at 28 January 2021, payable at the rate set out in the application for time to pay.

### **Decision**

The Tribunal grants an Order for payment of £11,350, payable at the rate of £100 per week.

### **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.**

Joan Devine

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**Legal Member**

**Date: 15 July 2021**

