



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

**Chamber Ref: FTS/HPC/CV/21/1158**

**Re: Property at 58F, South Methven Street, Perth, PH1 5NX (“the Property”)**

**Parties:**

**Mrs Lesley Mollison, 17 Netherlea, Scone, Perth, PH2 6QA (“the Applicant”)**

**Mr John Groves, 58F, South Methven Street, Perth, PH1 5NX (“the Respondent”)**

**Tribunal Members:**

**Jan Todd (Legal Member)**

**Decision in absence of the Respondent**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of rent arrears in the sum of £3975 be granted in favour of the Applicant from the Respondent.**

**Background**

1. This was the third Case Management Discussion to consider an application made by the Applicant for payment of rent arrears from the Respondent in relation to a lease originally entered into by her husband with the tenant. The notes of the two previous CMD’s are referred to for their terms.
2. The Applicant is an executor in her late husband’s estate and as such is claiming the right to recover rent arrears from the current tenant in the Property.
3. The Applicant explained when making the application that she could not access a copy of the lease as it was locked on her husband’s computer, but that the tenant had changed in September 2019 when the Respondent took over the tenancy.
4. The Following documents were lodged with the Application:-
  - a. Death certificate of Mr John Mollison
  - b. First page of a will by Mr John Mollison

- c. Notification of tenancy change dated 26<sup>th</sup> September 2019
  - d. Handwritten rent statement dated 12<sup>th</sup> May 2021
  - e. Statement from Applicant dated 14<sup>th</sup> July.
5. At previous CMDs the Applicant was advised that she required to establish her title to recover the arrears of rent and ideally that she would be able to show that Confirmation had been obtained in her name or the title to the property had been transferred into her name. following on the last CMD the Applicant's solicitor Mr Ian Lindsay of Wyllie and Henderson Solicitors had written on 19<sup>th</sup> October 2021 advising that he was one of the executors of the late Mr Mollison and co-executor with Mrs Mollison. He confirmed that the whole estate of the late Mr Mollison passes to his widow Mrs Mollison and that she has the sole right to claim rent arrears from the Property and in his position as executor he agrees with this course of action. In addition a new rent statement was lodged asking for an increase in the sum claimed and showing a sum due as of 5<sup>th</sup> August 2021 of £3,975
6. The Tribunal then issued a direction asking for a copy of the will and affidavit from the Executors confirming they are entitled to the rent from the Property.

## **7. Case Management Discussion**

8. The CMD today proceeded by way of teleconferencing and the Applicant was present but not represented. The Respondent was not present and had not lodged any representations. The Tribunal noted that the original papers and application were served on the Respondent by Sheriff Officers on 15<sup>th</sup> July 2021 and subsequent correspondence has been sent by post.
9. The Applicant advised that she had sent in a copy of her late husband's will and affidavit to the case workers e-mail address. The legal member took a short adjournment and checked and noted that these documents were now available. The Will confirms that the whole estate including the Property is to go to the Applicant and the affidavit from both executors confirms Mrs Mollison is entitled to the full rent arrears from the Property as the sole beneficiary.
10. The legal member confirmed that she was now satisfied about the Applicant's right title and interest to pursue the rent arrears.
11. The Applicant had previously explained at a CMD that the Respondent had sublet part of the property to another man known as Mr David Ross or Jenkins and that her husband and she herself had both tried to talk to the Respondent about subletting. She notes in her handwritten statement that the Respondent's response was "due to Covid he/they would not be paying and as Covid rules stand there isn't anything landlords can do to make them pay the rent due."
12. The Applicant confirmed today that the rent outstanding is £3,975 which is the sum due to 5<sup>th</sup> August 2021. She believes the Respondent is no longer living in the Property but confirmed he does still have keys. She has not taken back possession yet but has entered the Property to put batteries in a smoke alarm and confirmed that he can access mail there.

## **13. Findings in Fact**

14. The Respondent entered into a lease of the Property from the Applicant's late husband Mr Mollison which commenced on 1<sup>st</sup> September 2019 and continued thereafter on a monthly basis.
15. The Rent due in terms of the lease was £350 monthly payable in advance
16. The Respondent failed to pay the full rent on August and September 2020 and thereafter has failed to pay any rent.
17. The Respondent appears to have sublet the property without permission.
18. The rent outstanding as at 5<sup>th</sup> August 2021 is £3,975
19. No further payments have been made towards the rent.
20. The Applicant is entitled as the beneficiary in the late owner's will to the proceeds of rent from the renting out of the Property.

### **Reasons for Decision**

21. The Applicant is the widow of the late owner of the Property. The Property is still registered in the name of the late Mr John Mollison and the Applicant advised that although she has instructed solicitors to wind up the estate confirmation has not yet been granted.
22. The Tribunal has now seen however, a copy of the death certificate dated 6<sup>th</sup> October 2020, a copy of the late Mr Mollison's will which appoints the Applicant and Mr Ian Kerr Lindsay solicitor, joint executors and leaves amongst other items, the Property to the Applicant. Both executors have completed an affidavit dated 12<sup>th</sup> November 2021 confirming that the Applicant has right to the rent arrears by virtue of being her husband's residuary legatee. The Tribunal is satisfied that the Applicant has title and interest to bring this application.
23. The Tribunal notes that the Applicant advised that she does not have a copy of the tenancy agreement because this was locked on her husband's computer and she does not have access to it. She has however provided a copy notification of tenancy change addressed to Perth and Kinross Council dated 26<sup>th</sup> September 2019 indicating that the new tenant was John Groves and tenancy started on 1<sup>st</sup> September 2019 with a rent of £350. She has also lodged a copy notice to leave served on Mr Groves dated 5<sup>th</sup> February 2021, track and trace receipts signed by "Grove", copy Pre Action rent arrears letters and copy bank statements showing a payment of £350 paid by a David Jenkins on 1<sup>st</sup> November and 2<sup>nd</sup> December 2019 for rent for 58 F.
24. The Applicant has lodged a statement stating that the Respondent is the tenant in the Property and that he allowed a gentleman known as David Jenkins or David Ross to stay in it without permission which is why some rent payments were noted as paid by David Jenkins. She has at the previous CMD confirmed that she has spoken to the Respondent and is therefore aware he is the tenant there. She has confirmed that no further rent payments have been made and that the sum due as of 5<sup>th</sup> August 2021 is £3,975. She believes that the Respondent is no longer living there but confirmed he has not returned the keys and so still has access to the Property as she has not taken over possession yet. The Applicant may seek to do so shortly by raising an eviction action. The Tribunal is satisfied that a tenancy has been entered into between the late Mr Mollison and the Respondent and given it was entered into after December 2017 it is a private rented tenancy.

25. The Tribunal notes the application and all papers accompanying it were served by sheriff officer on the Respondent on 15<sup>th</sup> July. All subsequent papers have been sent to the Property address and have not been returned. There has been no appearance or written response from the Respondent.
26. The Tribunal being satisfied on the balance of probabilities that a tenancy was entered into between the late Mr Mollison and the Respondent and being satisfied that the rent arrears are currently £3,975 and that the Applicant is entitled to payment of the rent arrears, grants the order for payment.

### **27. Decision**

- a. An order for payment in the sum of £3,975 is granted.

### **28. Right of Appeal**

- 29. 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: Jan Todd**

**Date: 15<sup>th</sup> November 2021**