



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

**Chamber Ref: FTS/HPC/CV/22/2660**

**Re: Property at 12 Farburn Terrace, Dyce, Aberdeenshire, AB21 7DT (“the Property”)**

**Parties:**

**Ms Anne Meehan, Mr Paul Gerrard Meehan, 10 Coularbank Road, Lossiemouth, Morayshire, IV31 6SL (“the Applicants”)**

**Ms Rabeca Kay, 29 Pitfour Court, Peterhead, Aberdeenshire, AB42 2YG and Mr Stephen James Black, formerly residing at 12 Farburn Terrace, Dyce, Aberdeenshire, AB21 7DT, whose whereabouts are currently unknown (“the Respondents”)**

**Tribunal Members:**

**Nicola Irvine (Legal Member) and Linda Reid (Ordinary Member)**

**Decision (in absence of the Second Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Order for Payment against the Respondents in favour of the Applicants in the sum of £2,524.14 with interest at the rate of 4% per annum from today’s date until payment.**

1. The Applicants submitted an application under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The Applicants sought an order for payment in respect of rent arrears said to have been incurred by the Respondents.
2. A case management discussion (“CMD”) took place on 16 March 2023. Reference is made to the Note and Notice of Direction issued following that CMD.
3. On 29 March 2023, the Tribunal received an email from the First Respondent, attaching a screenshot of a message sent by her on 24 June 2019.

4. On 5 April 2023, the Tribunal received an email from the Applicants' representative, attaching email correspondence.

### **The Hearing**

5. The Hearing took place by conference call. The Applicants were represented by Mr McKeown. The First Respondent represented herself. The Second Respondent did not join the conference call and the Hearing proceeded in his absence. The Tribunal enquired whether parties intended to lead evidence. Both parties indicated that no evidence was to be led and that parties wished to make oral submissions instead.
6. The Applicants' representative accepted that the First Respondent sent an email to the Applicants' letting agent on 24 June 2019. The Applicants' letting agent responded to the First Respondent on 24 June 2019 explaining that the email did not constitute a valid notice to terminate the tenancy. The letting agent advised that if the tenancy was terminated properly and the Second Respondent wished to remain in the property, affordability checks would have to be carried out. The Applicants' letting agent received a letter dated 23 August 2021, purporting to be signed by both Respondents. That letter gave notice that the Respondents wished to terminate the tenancy. The tenancy was terminated on 20 September 2021 and keys were returned to the Applicants' letting agent. The Applicants' representative referred to clause 24 of the tenancy agreement which provides "*The Tenancy may be ended by the Tenant giving the landlord at least 28 days' notice in writing to terminate the tenancy, or an earlier date if the landlord is content to waive the minimum 28 day notice period.... To end a joint tenancy, all the joint tenants must agree to end the tenancy. One joint tenant cannot terminate the joint tenancy on behalf of all joint tenants.*" The Applicants' representative invited attention to sections 48 and 78 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). The Applicants' position was that both Respondents remained jointly and severally liable for payment of rent. The Applicants' representative moved for an order for payment in the sum of £2,524.14 against both Respondents, with interest.
7. When invited to make submissions, the First Respondent declined to do so.
8. The Hearing was adjourned briefly to allow the Tribunal members to discuss matters in light of the submissions made. When the Hearing reconvened, the First Respondent failed to re-join the Hearing and from that point the Hearing proceeded in her absence.

### **Findings in Fact**

9. The parties entered into a private residential tenancy which commenced 3 April 2018.
10. The contractual rent was £530 per month, in advance.

11. The contractual rent reduced to £475 per month with effect from March 2019.
12. The tenancy terminated on 20 September 2021.
13. The Respondents incurred rent arrears amounting to £2,524.14.

### **Reason for Decision**

14. The Tribunal proceeded on the basis of the documents lodged and the submissions made at the Hearing. The Second Respondent did not participate at all, and the First Respondent declined to make any submissions and did not re-join the Hearing after the brief adjournment. The rent statement lodged demonstrated that there are arrears of rent due. There was nothing to indicate that either of the Respondents disputed the level of rent arrears shown on the rent statement. The Tribunal was satisfied that the sum of £2,524.14 is due to the Applicants in respect of rent arrears.
15. The Tribunal had regard to the following provisions of the 2016 Act:

#### Section 48

##### *Tenant's ability to bring tenancy to an end*

*(1) A tenant may bring to an end a tenancy which is a private residential tenancy by giving the landlord a notice which fulfils the requirements described in section 49.*

*(2) A tenancy comes to an end in accordance with subsection (1) on the day on which the notice states (in whatever terms) that it is to come to an end.*

*(3) But a tenancy does not come to an end in accordance with subsection (1) if—*

*(a) before the day mentioned in subsection (2), the tenant makes a request to the landlord to continue the tenancy after that day, and*

*(b) the landlord agrees to the request.*

*(4) In subsections (1) and (3), in a case where two or more persons jointly are the landlord under the tenancy, references to the landlord are to any of those persons.*

#### Section 78 (3)

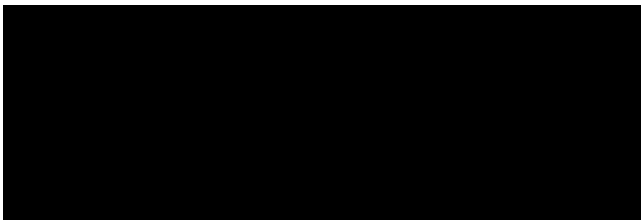
*(3) In a case where two or more persons jointly are the tenant under a tenancy, references in this Act to the tenant are to all of those persons unless stated otherwise.*

16. The Tribunal also had regard to the terms of the tenancy agreement and the glossary of terms and interpretation which accompanied the tenancy agreement. The glossary of terms and interpretation defines joint and several liability. Clause 1 of the tenancy agreement provides “*that the term “tenant” applies to each of the individuals above and the full responsibilities and rights set out in this agreement apply to each tenant who will be jointly and severally liable for all of the obligations of the tenant under this agreement.*” Both Respondents therefore had notice from the outset that they were jointly and severally liable in terms of the agreement. Clause 24 specifically states that one tenant cannot terminate a joint tenancy. Whilst there was no factual dispute that the First Respondent left the property in or around June 2019, she remained liable for all of the obligations under the tenancy agreement, including rent, until it was terminated.

17. The Tribunal observed that the debt due by the Respondents has been outstanding for a significant period of time. It was noted that the tenancy agreement did not make provision for interest on late payment of rent. The Tribunal exercised its discretion in terms of rule 41A and awarded interest on the sum due at the rate of 4% per annum from today’s date until payment.

### **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.**



**4 May 2023**

**Date**