



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 30(2) of the Housing(Scotland) Act 1988.**

**Chamber Ref: FTS/HPC/PR/19/1469**

**Re: Property at 2 Clune Cottage, Dores, Inverness, IV2 6TR (“the Property”)**

**Parties:**

**Mr Howard McKee, Mrs Angela McKee, 2 Clune Cottage, Dores, Inverness, IV2 6TR (“the Applicants”)**

**Mr Magnus Grant, 1 Clune Cottage, Dores, Inverness, IV2 6TR (“the Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member)**

## **Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent, the landlord in an assured tenancy at the property has failed to provide a tenancy agreement which fairly reflects the terms of the existing tenancy in terms of Section 30(1) of the Housing (Scotland) Act 1988. Accordingly the Tribunal draws up tenancy terms as set out on pages 9 and 10 of this document which it declares are terms which fairly reflect the terms of the assured tenancy at the property. Those tenancy terms as set out on pages 9 and 10 of this document are therefore deemed to have been duly executed by the parties as drawn up by the Tribunal, all in terms of Section 30 of the 1988 Act.**

## **Background**

**This is an application under Rule 68 of the Tribunal Rules for a written tenancy agreement to be drawn up in terms of Section 30 of the Housing (Scotland) Act 1988**

the landlord having failed to draw up a written tenancy agreement in terms of Section 30(1) of the 1988 Act.

The matter first came to a case management discussion (CMD) on 25<sup>th</sup> October 2019 and was continued to a further CMD on 17<sup>th</sup> December 2019. On that date the matter was continued to a further CMD on 7<sup>th</sup> February 2020. The Tribunal issued Directions requiring parties to set out what they understood the terms of the tenancy to be. A final CMD took place on 17<sup>th</sup> July 2020 by teleconference, the previous CMD date having been postponed due to the Covid 19 situation.

Reference is made to the previous CMD notes of 25 October and 17<sup>th</sup> November 2019 and the note of 7<sup>th</sup> February 2020. The following notes cover the issues discussed and agreed over all of the CMDS.

At the teleconference on 17<sup>th</sup> July 2020 both of the Applicants were in attendance with their representative Mr Martin and the Respondent was in attendance with his solicitor Mr Angus Brown.

In dealing with the application at the CMDs the Tribunal had sight of the Application, a typed letter dated 22/4/19 and some email correspondence together with a letter from Mr Brown Solicitor on behalf of the Respondent dated 21 August 2019, written submissions on behalf of both parties, written responses to Tribunal Directions submitted on behalf of both parties and the notes of previous CMDS.

The Tribunal requested to know if a tenancy agreement had been drawn up by the Respondent and Mr Brown advised that Mr Magnus Grant, the Respondent was an agricultural tenant who required consent of his landlord in order to sublet the property which was situated on part of the land forming the agricultural tenancy. Reference was made to Aldourie Estates Ltd as the proprietors of the land forming Clune Farm on which the property is situated. Mr Brown indicated that the Respondent's uncle Alasdair Cameron Grant had assigned to him the agricultural tenancy on which the property was situated in 2017. Mr Brown had asked permission of Mr Magnus Grant's landlord to create a Private Residential Tenancy at the property but the ultimate landlord had not responded to a request to create such a tenancy and as a result no tenancy agreement had been drawn up. Mr Brown indicated that he was of the view that consent would not now be given for a Private Residential tenancy and was seeking that the Tribunal draw up terms of the existing tenancy agreement as attempts to deal with matters outwith the Tribunal were clearly not going to progress further.

### **Nature of Tenancy**

There was discussion as to the nature of the tenancy. It was agreed that the property was a semi detached house with its own entrance which the Applicants had occupied as their home since a date on or around 1<sup>st</sup> July 2002. The initial agreement according to the Applicants was to lease the property for an indefinite period in exchange for rent and this had been agreed verbally with Alasdair Cameron Grant who was the landlord

when the agreement was made. The Applicants agreed when asked that they thought the lease would be for at least a year but expected it to be longer. This was not disputed on behalf of the Respondent who had little information as to the initial agreement.

Although the property was on an agricultural tenancy on land at Clune Farm, Aldourie, Inverness, said to be a tenancy in terms of the Agricultural Holdings (Scotland) Act 1991 and was comprised of a house known as 2 Clune Cottage which had a garden, this garden area was less than 2 acres and there was no farmland included in the property. The Applicants did not farm any land or have control of farming around the property which was described as being more "in the envelope" of the village than being on actual farmland.

Parties appeared to agree that no Form AT5 had been served and after some discussion it was agreed that the tenancy appeared to be an assured tenancy in terms of the Housing (Scotland) Act 1988 and not a short assured tenancy in terms of the same Act. The property did not appear to meet the criteria for a tenancy excluded from being an Assured Tenancy as set out in Schedule 4 of the Act.

There was then a discussion as to how the Respondent became the landlord. The Applicants indicated that they had dealt initially with Mr Alasdair Cameron Grant but Mr Magnus Grant (the Respondent) had lived at the property next door throughout their time at the property and there came a point where he had a discussion over the fence with the Applicant Mrs McKee when he indicated that he was taking over the farm from Alasdair Cameron Grant (his uncle) and that he would be in charge. The Applicants could not say exactly when this conversation took place but could not dispute that it could have taken place around March 2017 when the Respondent said the Agricultural Tenancy was assigned to him by his uncle Alasdair Cameron Grant. It was clear that the Applicants had accepted the situation with the change of landlord and the tenancy appeared to have continued with no other changes.

It was agreed on the information available that the lease appeared to have been for at least a year and had rolled over continuously for successive year periods by virtue of tacit relocation.

For the Respondent it was said that he became the landlord when the agricultural tenancy was assigned to him in 2017. This was done by letter which did not mention the tenancy for the property but the submission made on behalf of the Respondent was that the tenancy for the Property had been assigned to him along with the Agricultural Tenancy. Mr Brown for the Respondent suggested that as the Applicants had a real right, a lease on the property, this had simply continued on the same terms with Mr Alastair Grant's successor in the agricultural lease taking over as landlord.

Whilst there was no paperwork produced at all to reflect any agreement the Applicant Mrs McKee recalled being asked to sign something some years before by the Respondent but had not been given a copy and could not say what she had signed. When asked the Respondent had no recollection of this.

The discussion then centred around the parties' views of the terms of the lease. Parties were agreed on the start date as being 1<sup>st</sup> July 2002, the rent being £ 400 per month, the extent of the property leased, the fact it was unfurnished, the parties to the lease, and the fact that no deposit was paid. It was further agreed that the applicants as tenants made their own arrangements for council Tax, local and water authority burdens and the provision of electricity and broadband at the property. It was also agreed that the tenants had always been responsible for internal decoration the purchase and maintenance of white goods and cleaning of the chimney, stove, and windows.

It was agreed that the Respondent was responsible for servicing, safety and maintenance of the solid fuel stove and associated flue, the plumbing including the water heating system, the electrics, the perimeter fence, buildings insurance, maintenance of the windows, outside guttering and walls, drains, external pipes, and keeping the property wind and watertight.

The final point which was ultimately agreed related to liability for maintenance, repair and if necessary, renewal of conduits to the property such as pipes and cabling and it was agreed that this rested with the Respondent landlord only in so far as he is legally responsible for such maintenance repair and renewal and unless the requirement for such maintenance renewal or repair was caused by or due to the actions of the tenants. It was also agreed that the tenants were required to inform the landlord as soon as is reasonably practicable of any claim being made in respect of a requirement for maintenance, repair or if necessary renewal of the conduits to the property. Finally it was agreed that unless due to or caused by any action on the part of the Applicant tenants the landlord Respondent would be liable to address any dispute arising from maintenance, repair and if necessary renewal of the conduits providing services to the property in so far as the landlord is legally responsible for such maintenance, repair or if necessary renewal.

The parties also felt that the agreement made initially would have allowed parties to give notice to terminate the agreement and as such it was agreed this would feature in the tenancy terms.

These terms were agreed and reflected the parties' understanding of the terms of the lease agreement.

I was prepared to decide the matter without a Hearing as I felt there was sufficient information before me in order to do that and the procedure adopted had been fair.

## **Findings in Fact**

1. The Applicants leased the property at 2 Clune Cottage, Dores, Inverness, IV2 6TR in order to live there with effect from 1 July 2002.
2. The property leased is a semi-detached house with its own entrance and has a garden area of less than 2 acres.

3. The property is situated on land known as Clune Farm which forms an agricultural tenancy in terms of the Agricultural Holdings ( Scotland) Act 1991.
4. No farmland is included with the property at 2 Clune Cottage.
5. Alasdair Cameron Grant, the uncle of the now Respondent was the tenant in the agricultural tenancy at Clune Farm on which the property is situated, at the time that 2 Clune Cottage was first leased to the Applicants.
6. Alasdair Cameron Grant agreed to lease 2 Clune Cottage to the Applicants with effect from 1 July 2002 in exchange for monthly rent.
7. Alasdair Cameron Grant assigned his interest in the agricultural tenancy of Clune Farm to his nephew the now Respondent in March 2017.
8. The assignation did not include any reference to the tenancy of the Applicants at 2 Clune Cottage.
9. Sometime around March 2017 the now Respondent Magnus Grant advised the Applicant Mrs McKee verbally that he had now taken over Clune Farm from his uncle Alasdair Cameron Grant and that he would now be in charge of matters. This was accepted by the Applicants and no other changes were made to the terms of their verbal agreement with Alasdair Cameron Grant.
10. The agricultural tenancy at Clune Farm requires the tenant to seek the landowner's permission in order to sublet any part of the property.
11. When the Applicants first leased the property at 2 Clune Cottage from Alasdair Cameron Grant the landowner at that time was aware of the sublease. A new landowner acquired the property of Clune Farm in 2019 but the Respondent's agricultural tenancy continued. The Respondent's solicitor attempted to seek permission of the landowner to create a Private Residential tenancy at 2 Clune Cottage but received no response.
12. The existing tenancy arrangements were never written down and no tenancy agreement exists.
13. The Applicants paid rent for the property of £ 400 per month to Alasdair Cameron Grant and now pay the same rent monthly to the Respondent Magnus Grant.
14. No deposit was paid for the property which was leased unfurnished to the Applicants and contained no fixtures and fittings when they moved in.
15. No specific duration was agreed for the lease but the Applicants were of the view that it would be for at least a year and could continue beyond that time. It could be terminated by either party on two months' notice.

16.The tenants make their own arrangements at the property for council tax and other burdens imposed by local and water authorities, and with broadband and electricity providers for the property.

17.The tenants are responsible for the internal decoration, the purchase and maintenance of white goods and cleaning of the chimney, stove and windows at the property.

18.The landlord is responsible for servicing, safety and maintenance of the solid fuel stove and associated flue, the plumbing including the water heating system, the electrics, the perimeter fence, buildings insurance, maintenance of the windows, outside guttering and walls, drains, external pipes, and keeping the property wind and watertight.

19 Liability for maintenance repair and renewal of conduits such as pipes and cabling running over the property rests with the Respondent landlord only in so far as he is legally responsible for such maintenance repair and renewal of these conduits and unless the requirement for such maintenance renewal or repair was caused by or due to the actions of the tenants. The tenants are required to inform the landlord as soon as is reasonably practicable of any claim being made in respect of a requirement for maintenance, repair or if necessary renewal of the conduits to the property. Unless due to or caused by any action on the part of the Applicant tenants the landlord Respondent is liable to address any dispute arising from maintenance, repair and if necessary renewal of the conduits providing services to the property in so far as the landlord is legally responsible for such maintenance, repair or if necessary renewal.

20.The landlord by virtue of agreement between the parties is the Respondent Magnus Grant of 1 Clune Cottage,Dores, Inverness, IV2 6TR.

21.The tenancy at 2 Clune Cottage,Dores, Inverness, IV2 6TR is an assured tenancy in terms of the Housing (Scotland) Act 1988.

22.The Landlord having failed to draw up a tenancy agreement it is appropriate for the Tribunal to draw up terms in accordance with Section 30 of the 1988 Act.

### **Reasons for Decision**

The Tribunal considered whether this was an assured tenancy in terms of the 1988 Act, and whether the Respondent was the landlord in terms of any lease before agreeing to draw up tenancy terms in terms of the Application under Rule 68 of the Tribunal rules.

There was little information before the Tribunal as the original agreement between the Applicants and the Respondent's uncle was some 18 years ago and appears to have been verbal and lacking in detail. It was clear from the information given to the Tribunal

that the property was let for residential use in exchange for rent and was unfurnished. Whilst no specific duration was agreed it was clear that the Applicants envisaged that they would live there for some time and when asked at a CMD , agreed it would be for at least a year but expected it to be longer. There is authority to the effect that a duration of year in a lease can be inferred provided that there is agreement on other matters and tenants have taken occupation or agreed to do so. Reference is made to ***Gray v Edinburgh University 1962 SC 157*** on this point. I was content that a period of a year could be inferred here as a duration and given the facts presented regarding continuous occupation, there was a clear inference that this agreement had continued yearly by virtue of tacit relocation. The ish date for the lease was therefore 1<sup>st</sup> July 2003, one year after it commenced.

The property did not fall within the category of tenancies excluded from being assured tenancies under the Act and I was prepared to find that this was an assured tenancy on the facts before me.

The question of the landlord was also considered since there had been a change when Alasdair Cameron Grant assigned the agricultural tenancy at Clune Farm to his nephew the now Respondent Magnus Grant. The Respondent's solicitor argued that it followed that the tenancy with the Applicants at 2 Clune Cottage had been assigned to the Respondent at the time when the agricultural tenancy at Clune Farm had been assigned. I was not prepared to accept that on the information I had before me, given that I was advised that the assignation of the agricultural tenancy (which I did not have sight of ) did not mention the tenancy at 2 Clune Cottage. However it was clear from the information before me that the Respondent Magnus Grant had a heritable interest in the property leased due to it being on land on which he became the agricultural tenant in 2017. In that position he was entitled to seek permission for a sublet of that property. There was an existing agreement in place at 2 Clune Cottage with the Applicants in occupation and he approached one of the Applicants verbally and advised he was taking over the farm and that he would be in charge. This change had clearly been accepted by the Applicants who started to pay him rent and regarded him as the landlord thereafter. The Respondent I found was entitled to take over as landlord as the successor in the agricultural tenancy but had done so by agreement with and indeed acquiescence of the Applicants. Nothing in this appeared to affect the ongoing nature of the tenancy since 2002 as no changes to the tenancy terms were made by him.

There was discussion as to whether the Respondent or indeed his uncle as the initial landlord had appropriate permission to enter into this lease with the ultimate landowners. There was little before me by way of information on permission other than in the early years of the tenancy. However it appeared to me after discussion, not to be a matter for the Tribunal to concern itself with. The matter I required to address was whether this was a tenancy under the 1988 Act and whether it was appropriate for me to draw up tenancy terms if the landlord had failed to do so. The question of

permission or otherwise would be a matter between the Respondent and the landowner in the agricultural tenancy.

Having considered these matters I was prepared to find that this was a tenancy under the 1988 Act in which the landlord had failed to draw up an agreement and accordingly the Tribunal drew up terms as agreed by the parties as fairly reflecting the terms of the tenancy.

## **Decision**

**The Tribunal was satisfied that the Respondent, the landlord in an assured tenancy at the property has failed to provide a tenancy agreement which fairly reflects the terms of the existing tenancy in terms of Section 30(1) of the Housing (Scotland) Act 1988. Accordingly the Tribunal draws up tenancy terms as set out on pages 9 and 10 of this document which it declares are terms which fairly reflect the terms of the assured tenancy at the property. Those tenancy terms as set out on pages 9 and 10 are therefore deemed to have been duly executed by the parties as drawn up by the Tribunal, all in terms of Section 30 of the 1988 Act.**

## **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.**

**17 July 2020**

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**Legal Member/Chair**

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**Date**



## **Tenancy Terms**

- 1.The tenancy is for the property at 2 Clune Cottages, Dores, Inverness IV2 6TR and includes the garden area to the extent of the fences and the huts at the back of the property.
- 2.The tenancy is an assured tenancy under the Housing (Scotland) Act 1988.
- 3.The Landlord is the Respondent Magnus Grant of 1 Clune Cottage, Dores, Inverness IV2 6TR.
- 4.The Tenants are the Applicants Mr Howard and Mrs Angela McKee.
- 5.The tenancy runs for a period of a year from 1 July 2002 and has an end or “ish” date of 1 July 2003.It continues thereafter on a yearly basis by tacit relocation unless terminated by either party on 2 months’ notice.
- 6.The rent is £400 per month and is payable monthly by the tenants directly to the Landlord Magnus Grant.
- 7.No deposit was paid by the tenants in respect of the property.
8. The property contained no fixtures and fittings when the tenants took occupation and it was unfurnished.
- 9.The Tenants have made their own arrangements in respect of council tax and any other burden imposed by the local authority or water authority for the property.
- 10.The tenants shall take reasonable care in all matters relating to the property and shall be responsible for the internal decoration, the purchase and maintenance of white goods and cleaning of the chimney, stove, and windows.
- 11.The landlord will be responsible for servicing, safety and maintenance of the solid fuel stove and associated flue, the plumbing including the water heating system, the electrics, the perimeter fence, buildings insurance, maintenance of the windows, outside guttering and walls, drains, external pipes, and keeping the property wind and watertight.
- 12.The tenants will make their own arrangements with service providers including inter alia electricity providers and broadband providers, in relation to the provision of those services to the property.
- 13.The landlord will be liable for inter alia maintenance, repair and if necessary, renewal of the conduits providing services to the property (including pipes and cabling) where those conduits are external to the property, only in so far as the landlord is legally responsible for that maintenance, repair or, if necessary renewal, unless such

maintenance, repair or if necessary renewal of any such conduits is caused by or due to the actions of the tenants.

- (a) The tenants will be required to inform the landlord as soon as is reasonably practicable of any claim being made regarding a requirement for maintenance, repair or if necessary renewal of the conduits referred to above.
- (b) Unless due to or caused by any action of the tenants the landlord will be liable to address any dispute arising from the maintenance, repair or renewal of the conduits referred to above providing services to the property, in so far as the landlord is legally responsible for such maintenance, renewal or repair.

Valerie Bremner