



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)**

**Chamber Ref: FTS/HPC/EV/22/2627**

**Re: Property at 39 Balvaird Place, Perth, PH1 5DZ (“the Property”)**

**Parties:**

**Mrs Lesley Whyte, 5 Wilson Street, Perth, PH2 0EX (“the Applicant”)**

**Miss Sinead Lovie, 10 Mackenzie Court, Fairfield, Perth, PH1 2TE (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member) and Eileen Shand (Ordinary 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 by the Respondent in the sum of £4,330.14 should be made in favour of the Applicant.**

**Background**

1. By application lodged on 1 August 2022, the Applicant originally sought a payment order against the Respondent and a Second Respondent, Michael O’Brien, in the sum of £3,500 in respect of rent arrears arising from their joint tenancy of the Property. Supporting documentation was lodged with the application, including a copy of the tenancy agreement and a Rent Statement showing the balance of rent arrears owing at the time of the application being made of £3,500. A linked application for eviction was lodged at the same time under Chamber Reference FTS/HPC/EV/22/2623. An order for eviction was granted by the Tribunal in that application on 6 February 2023.

2. On 3 November 2022, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. On 14 December 2022, a copy of the Application and supporting documentation was served on both Respondents by Sheriff Officer, together with intimation of the date, time and details of the Case Management Discussion (“CMD”) to take place by telephone conference call on 6 February 2023. Written representations were to be lodged by 3 January 2023. No written representations were submitted by the Respondent, although representations were lodged on behalf of the Second Respondent by his solicitor by email on 28 December 2022.
4. On 23 January 2023, the Applicant’s representative, her letting agent, emailed the Tribunal Administration attaching an updated rent statement, indicating that the rent arrears now amounted to £7,000. This was notified to the other parties by the Tribunal Administration.
5. A CMD took place on 6 February 2023. The Applicant and her letting agent was present. Neither Respondent was present but the Second Respondent was represented by his solicitor, Mr MJ Tavendale, from Hodge Solicitors. The Respondent did not attend. Reference is made to the CMD Note dated 6 February 2023 issued to parties following the CMD. It had been noted at the CMD that the rent arrears owing when the application was lodged amounted to £3,500 but that arrears by then amounted to £7,700. The joint tenancy had commenced on 15 February 2022. The monthly rental was £700. Reference was made to the Rent Statement and updated Rent Statement dated 23 January 2023 which had been lodged. The Tribunal had noted that the last payment received was in March 2022 and that the rent account had been continuously in arrears since April 2022. The Second Respondent did not dispute the amount of the rent arrears stated as owing but did, at that time, dispute that he was liable in respect of the rent arrears, due to the background circumstances and, in particular, that his relationship with the Respondent had ended shortly after they had entered into the joint tenancy, that he had moved out of the Property at that time and not occupied it since and that he had been trying to terminate his interest in the tenancy since around 4 March 2022. The Applicant’s letting agent, whilst generally confirming these background circumstances, maintained that both tenants required to terminate the joint tenancy and that, as that had not been done, the tenancy remained in place, with the Second Respondent being jointly and severally liable in respect of rent and the other obligations of the tenancy. Legal arguments were advanced on behalf of the Second Respondent in this regard and, as there were disputed issues, the Tribunal continued the application to an Evidential Hearing, which was subsequently fixed to take place by telephone conference call on 15 May 2023. The Tribunal also issued a Direction to parties dated 6 February 2023 requiring specified documentation to be lodged in advance of said Evidential Hearing.
6. An Evidential Hearing took place on 15 May 2023. The same parties were represented as at the CMD. Further documentation had been lodged on behalf of the Applicant and the Second Respondent in advance of same. The

Respondent was not in attendance and had not submitted any representations or documentation in advance. Reference is made to the Hearing Note dated 15 May 2023 issued to all parties following said Hearing. It was noted by the Tribunal that the Second Respondent's solicitor and the Applicant's letting agent had been in discussion and had recently reached agreement on the Second Respondent's liability in respect of the rent arrears and that an agreed sum had now been paid which the Applicant was prepared to accept as full and final settlement in respect of the Second Respondent's liability. The Applicant sought to amend the application in this regard and now wished to proceed with the application against the Respondent only, in respect of the outstanding balance of the rent arrears, stated as £4,330.14. It was also noted that the Respondent had vacated the Property on 10 March 2023, following the granting of the eviction order on 6 February 2023 and had been re-housed by the local authority. The forwarding address of the Respondent was unknown to the Applicant at that time. It was noted by the Tribunal that, as the Tribunal had been unaware until now that the Respondent had vacated, that the Respondent would not have been notified of the recent written representations lodged on behalf of both the Applicant and Second Respondent advising of the updated position, as the Tribunal Administration will have issued same to the Respondent at the Property address. Having considered matters fully, the Tribunal accordingly acceded to the Applicant's request to amend the application to proceed against the Respondent only, and that in the amended sum of £4,330.14. The Tribunal then continued the amended application to a further Evidential Hearing, in order for the Respondent's forwarding address to be ascertained and for the Respondent thereafter to be notified of the amended application and outcome of this Hearing. The Tribunal also issued a Direction dated 15 May 2023 requiring the Applicant to advise the Tribunal of the Respondent's forwarding address if that could be ascertained and to lodge a breakdown showing how the sum of £4,330.14 has been calculated, in advance of the further Evidential Hearing to be fixed.

7. On 24 May 2023, in accordance with the Tribunal's Direction, the Applicant's letting agent emailed the Tribunal with a note of the Respondent's forwarding address and an updated Rent Statement showing the balance owing as at that date. On 1 June 2023 and 24 July 2023, by Recorded Delivery post, the Tribunal circulated copies of same to the Respondent, together with copies of the documentation specified in paragraph 6 above and notified her of the date, time and other arrangements for the further Evidential Hearing fixed to take place on 21 August 2023 by telephone conference call.

### **Evidential Hearing**

8. On 21 August 2023 at 10am, the further Evidential Hearing took place. The Applicant was in attendance, together with her letting agent, Ms Bernadette O'Conner from Simple Approach Letting Agents. The Respondent was not in attendance and nor had she been in contact nor lodged any written representations with the Tribunal in advance of the Hearing. The Tribunal delayed the commencement of the Hearing, giving the Respondent the opportunity to join late, but she did not do so.

- Ms O'Conner was asked to provide any update on the situation since the case called for the previous Evidential Hearing on 15 May 2023 and to confirm the position of the Applicant today. Reference was made to the updated Rent Statement which had been lodged, showing the balance outstanding as at 24 May 2023 as £4,330.14. Ms O'Conner confirmed that matters are no further on than they were at the previous Hearing. No further payments have been made and there has been no communication from the Respondent whom they wrote to at her new address. The Applicant is accordingly seeking a payment order against the Respondent in respect of the outstanding balance of £4,330.14. The Tribunal asked for clarification regarding the rental deposit of £800 which had been mentioned previously. The Applicant confirmed that, although she had received the full deposit back, the costs of rectifying all the damage caused to the Property by the Respondent before she vacated well exceeded the £800, so there is no balance left for applying to the rent arrears.

### **Findings in Fact**

- The Applicant is the owner and landlord of the Property.
- The Respondent was the joint tenant of the Property by virtue of a Private Residential Tenancy commencing 15 February 2022.
- The Respondent remained in occupation of the Property until 10 May 2023, when she vacated following an eviction order being granted in a separate application on 6 February 2023 on the basis of rent arrears.
- The rent in terms of the tenancy was £700 per calendar month.
- Rental arrears have accrued since April 2022 and amounted to £3,500 when the application was lodged with the Tribunal; £7,930.14 as at 15 May 2023; and now amount to £4,330.14.
- The former joint tenant (previously a Second Respondent in this application) had lived at the Property for a very brief period until on or around 4 March 2022 when he moved out following a relationship breakdown with the Respondent.
- The former joint tenant was jointly and severally liable in respect of the rent arrears but made payment of a lump sum towards the rent arrears of £3,600 on 15 May 2023, thereby reducing the outstanding balance to £4,330.14.
- The sum of £3,600 was accepted by the Applicant in full and final settlement of the former joint tenant's liability in respect of the rent arrears and the application was amended and thereafter proceeded against the Respondent only.
- The Respondent has never engaged with the Applicant or her letting agent in respect of the rent arrears.

10. The Respondent has been called upon to make payment of the rent arrears or to enter into a satisfactory payment arrangement but has failed to do so.
11. The Respondent has not entered into the Tribunal process, put forward any opposing information to that of the Applicant nor asked for a time to pay direction.
12. The balance of the rent arrears in the sum of £4,330.14 is due and resting owing by the Respondent.

### **Reasons for Decision**

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, and the oral evidence given throughout by and on behalf of the Applicant.
2. The Tribunal found that the application (as amended) was in order, that no representations had been made by the Respondent who had not engaged in the Tribunal process and that she had not attended the Evidential Hearing, having been properly and timeously notified of same. The Tribunal considered that there was nothing to contradict the evidence on behalf of the Applicant. The Tribunal was satisfied that, in all the circumstances, a payment order in terms of the amended application against the Respondent could properly be made.

### **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.**

N Weir

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Legal Member/Chair

**21 August 2023**  
Date