



**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/19/4098

**Re: Property at Flat 2 Victoria Buildings, 34 Union Street, Lochgilhead, Argyll,
PA31 8JS (“the Property”)**

Parties:

**Mrs Margaret MacCallum, Auchnabreck, Carradale, Campbeltown, Argyll, PA28
6QL (“the First Applicant”)**

**Iain Kirkpatrick MacCallum, Auchnabreck, Carradale, Campbeltown, Argyll
PA28 6QL (“the Second Applicant”)**

**Mr William McKinven, Ms Charlotte MacMillan, 14 Mackintosh Way
Lochgilhead, Argyll, PA31 8UY (“the Respondents”)**

Tribunal Members:

David Bartos (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Respondents shall pay jointly and severally to
the First and Second Applicants the sum of ONE THOUSAND FIVE HUNDRED
(£1,500.00) POUNDS STERLING.**

Background

- 1. On 17 May 2019 the parties entered into a private residential tenancy of
the Property with the Applicants as joint landlords and the Respondents
as joint tenants. In granting the tenancy the First Applicant was acting on
behalf of herself and her co-owner of the Property, the Second Applicant.**
- 2. In this application the First, and subsequently both, Applicants sought
an order for payment of rent.**

3. On 14 February 2020 the Tribunal had a case management discussion ("CMD") at 10.00 hrs at Lochgilphead CE Centre, Manse Brae, Lochgilphead PA31 8XQ. It was attended by the First Applicant and her husband Iain K. MacCallum. There was no appearance by or on behalf of the Respondents. The Tribunal noted that Notice of the CMD at to-day's date, time and venue had been given to the Respondents in letters from the Tribunal dated 10 January 2020 which had been served on them by sheriff officers on 15 January 2020. Immediately before the commencement of the CMD the Tribunal checked and confirmed that no contact with the Tribunal Office had been made by either of the Respondents. The Tribunal proceeded with the CMD. It took the view that in the circumstances it was not unfair to the Respondents to proceed with the CMD and that it would be unfair to the First Applicant for there to be a delay.
4. The Respondents did not make any written representations to the Tribunal opposing the application or taking issue with any of the documents lodged with it.

Facts Not in Dispute Between the Parties

5. The following facts were not in dispute :
 - (a) The Applicants are co-owners of the Property. They have been so since 2008. The First Applicant holds power of attorney from the Second Respondent who is a marine engineer. The power of attorney empowers the First Applicant to let property and collect rent on his behalf;
 - (b) On or about 17 May 2019 the First Applicant, with the consent of the Second Applicant granted a private residential tenancy of the Property to the Respondents. The tenancy commenced on 17 May 2019;
 - (c) The tenancy provided for payment by the Respondents of rent in advance of £450 per month on the 17th day of each month;
 - (d) By rent increase notice dated 27 June 2019 and notified to the Respondents the Applicants sought to increase the rent to £550 per month. There was no objection to the rent increase notice from the Respondents;
 - (e) The Respondents have not paid any of the rent instalments due on 17 October, 17 November and 17 December all 2019;
 - (f) The total amount of rent due and unpaid up to the end of the tenancy is £1,650;
 - (g) The Respondents have paid a deposit which is currently held by SafeDeposits Scotland of £450.

Submission

- 6. At the CMD, the First Applicant addressed the issue of the lease having been granted by her alone when she and her husband were the owners. She explained that she had acted under a power of attorney from him dated 16 July 1991 which was still in force. This had been due to her husband being at sea for extended periods of time.**
- 7. Mr MacCallum confirmed that he was a marine engineer. He also confirmed that he had consented to the grant of the tenancy and had been involved in decision-making over dealings with the Respondents. He had been involved in seeking a rent increase. He indicated that having had difficulties with obtaining payment of rent, and the resultant stress, he and the First Applicant had decided to sell the Property.**
- 8. The First Applicant acknowledged that she would not be entitled to payment of the whole rent given that she was in truth only a co-landlord. She requested to amend the application to introduce Mr MacCallum as a Second Applicant.**
- 9. In considering her request the Tribunal applied the overriding objective namely to decide the case justly. Whilst the request to amend had not been notified to the Respondents had they attended the CMD they would have been made aware of it. Furthermore they had not objected to the application made by the First Applicant alone. Finally the Tribunal was unable to see any possible basis for refusing the request even if the Respondents had attended the CMD. In these circumstances the Tribunal granted the request and allowed the application to be amended to introduce Mr MacCallum as a Second Applicant.**
- 10. Both Applicants confirmed that there had been no objection from the Respondents to the rent increase notice. They submitted that the rent had therefore increased to £550 per month from 17 September 2019 onwards.**
- 11. They also indicated that the figure of £1,650 due in the months of October, November and December 2019 remained outstanding but that they were seeking to recover £150 of this from the deposit of £450 which had been lodged with SafeDeposits Scotland.**
- 12. They therefore sought an order for payment of £1,500 leaving them to recover the remaining £150 from the deposit.**

Reasons

- 13. The Tribunal considered the application, the oral submissions, the documentary evidence and the oral evidence from both Applicants. It found both of them to be credible and accepted their evidence. No doubt was cast on any of the documentary evidence. On that basis the Tribunal made the findings in fact stated above.**

14. The Tribunal was also satisfied that by virtue of the Rent Increase Notice and section 22 of the 2016 Act, the rent had increased with effect from 17 September 2019 to £550 per month.

15. In the circumstances the Tribunal accepted that the Respondents had breached their duty to pay the rent on the dates claimed. Given that the Applicants sought a restricted award of £1,500 the Tribunal made the decision stated above.

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.

D. Bartos

Legal Member/Chair **14 February 2020**
Date