



**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/21/2923**

**Re: Property at 1 Yonder Bognie Cottage, Forgue, Huntly, Aberdeenshire, AB54 6BR (“the Property”)**

**Parties:**

Mr Alexander Morison, residing at Frendraught House, Forgue, Huntly, AB54 6EB, Mr David Steuart Gordon, residing at Cairnfield, Buckie, AB56 5EL, Mr Grenville Francis Stanbury, residing at 39 The Culvery, Trevanion Road, Wadebridge, PL27 7DX, Mr Roy William Anderson, residing at 3 Westholme Crescent South, Aberdeen, AB15 6AF, Mrs Susan Roy, residing at 34 Whitelea Road, Kilmacolm, PA13 4HH and Mrs Bona McKenzie Murray Morison, residing at Frendraught House, Forgue, Huntly, AB54 6EB, all as Trustees acting under Deed of Trust by Alexander Gordon Morison Senior (The Bognie Trust) dated 28<sup>th</sup> July and registered in the Books of Council and Session on 8<sup>th</sup> August both in the year 1988, having a place of business at BMF Group, Estates Office, Frendraught House, Forgue, Huntly, AB54 6EB.

**(“the Applicant”)**

**Mrs Karen Dines, 1 Yonder Bognie Cottage, Forgue, Huntly, Aberdeenshire, AB54 6BR (“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**

- Background
- 1. This was the third Case Management Discussion in respect of an application by the Applicant dated 12<sup>th</sup> November 2021 for an order for payment of rent

arrears against the Respondent. The following documents were lodged with the application:-

1. Tenancy Agreement dated 24<sup>th</sup> and 27<sup>th</sup> September 2019
  2. Copy invoice showing no rent paid from 1<sup>st</sup> June 2021 to
2. The Applicant's representative had advised at the first CMD that the landlord was The Bognie Trust, which was also the owner of the Property and confirmed that Mr Morison is one of the head trustees for Bognie Trusts and the signatory for the lease. The Representative also noted that the rent arrears had increased and stood then at £3,680 and she confirmed she was seeking a payment order against the Respondent who she advised was the tenant in the Property for that sum.
  3. The Respondent did not attend the first CMD but was represented by her husband who confirmed that his wife was the tenant in the tenancy agreement and that they both lived at the Property. He agreed there were rent arrears and agreed the sum due was as stated by Mrs Carlin. He explained that he had been out of work and had had a lot of health issues and hospital appointments which prevented him from seeking employment. He confirmed he and his wife were receiving some benefits. He also advised that he had tried to speak to Mr Morison about this and to try to come to an arrangement to pay but Mr Morison had rejected his offers and advised him he wanted them to leave the Property. He confirmed that that he and his wife wished to make an offer to pay in instalments but he wanted to go over the time to pay form with an adviser at citizen's advice bureau. He also indicated he would start paying the rent so that the arrears did not continue to increase. He confirmed that he had the paperwork for applying for a time to pay order.
  4. The case was continued for clarification of the Applicant's title as it was noted a voluntary registration had been applied for and the Tribunal did not have details of the name of the applicant for this registration or evidence of their title.

### **Summary of Discussion at CMD on 9<sup>th</sup> March 2022 at 2pm**

1. Neither Mr Dines nor the Respondent called in during the CMD although the Tribunal had been advised that Mr Dines had phoned the teleconference line at approximately 9.45am that morning and had been advised by the clerk to phone in at 2pm as it was an afternoon CMD,
2. Ms Carlin had lodged copies of the application for voluntary registration in the name of the Trustees of the Bognie Trust and it was noted that there were 7 trustees named in the application namely: - Mr Alexander Gordon Morison; Mr David Gordon; Mr Grenville Stanbury; Mr Roy William Anderson; Ms Susan Roy; Mrs Bona McKenzie Morison and Mr Colin Clark. Before the CMD commenced the Tribunal received an e-mail which had been sent to the Tribunal's administration by Ms Carlin on 8<sup>th</sup> March asking for the name of the Applicant to be changed to run in the name of 6 individual trustees and this was confirmed by Ms Carlin at the CMD who explained that she realised that any order for payment should be made in the name of all the individual trustees if it was to be enforceable and she was seeking to amend the name of the applicant accordingly.

3. Ms Carlin was asking for the following amendment to be made to the Applicant; namely to have the Applicant designed as:-  
*Mr Alexander Morison, residing at Frendraught House, Forgue, Huntly, AB54 6EB, Mrs Bona Morison, residing at Frendraught House, Forgue, Huntly, AB54 6EB, Mr Roy Anderson, residing at 3 Westholme Crescent South, Aberdeen, AB15 6AF, Mr David Gordon, residing at Cairnfield, Buckie, AB56 5EL, Mrs Susan Roy, residing at 34 Whitelea Road, Kilmacolm, PA13 4HH and Mr Grenville Stanbury, residing at 39 The Culvery, Trevanion Road, Wadebridge, PL27 7DX, all as Trustees of the Bognie Trust, having a place of business at BMF Group, Estates Office, Frendraught House, Forgue, Huntly, AB54 6EB.*
4. Ms Carlin could not however explain why Mr Colin Clark was no longer named as a Trustee despite being named on the application for registration. As the application to amend had only been made the day before the CMD the Respondent had not received this yet; Ms Carlin wished to increase the rent claimed again and required to show evidence of the current list of Trustees and explain how this varied from the list on the voluntary registration of title to the Property, the CMD was adjourned to 3<sup>rd</sup> May 2022.
5. A Direction was sent asking for clarification of the current names of the Trustees and the rent claimed. In addition the Respondent was invited to complete and submit a time to pay application, if she wishes to do so and to attend the next CMD.

- **Case Management Discussion at 10am on 3<sup>rd</sup> May 2022**

1. The CMD proceeded today by way of teleconference. The Convener made introductions, and explained how the CMD would be conducted over the teleconference
2. The Applicant did not attend but was represented once again by Mrs Dawn Carlin from I Resolve solicitors. Neither the Respondent nor her husband Mr Robert Dines were in attendance and they had not lodged any written submissions or time to pay application since the last CMD.
3. Ms Carlin had lodged on 13<sup>th</sup> April a revised rent statement showing that the sum due up to and including 1<sup>st</sup> April 2022 was £4,979. The statement indicates no rent has been paid since 1<sup>st</sup> August 2021.
4. Ms Carlin had also lodged a letter from Thornton's solicitors certifying that the Trustees of Bognie Trust acting under the Deed of Trust by Alexander Gordon Morison Senior dated 28<sup>th</sup> July and registered in the Books of Council and Session were:
  - a. *Mr Alexander Morison, residing at Frendraught House, Forgue, Huntly, AB54 6EB,*
  - b. *Mr David Steuart Gordon, residing at Cairnfield, Buckie, AB56 5EL,*
  - c. *Mr Grenville Francis Stanbury, residing at 39 The Culvery, Trevanion Road, Wadebridge, PL27 7DX,*
  - d. *Mr Roy William Anderson, residing at 3 Westholme Crescent South, Aberdeen, AB15 6AF,*
  - e. *Mrs Susan Roy, residing at 34 Whitelea Road, Kilmacolm, PA13 4HH and*
  - f. *Mrs Bona McKenzie Murray Morison, residing at Frendraught House, Forgue, Huntly, AB54 6EB,*

*all as Trustees acting under Deed of Trust by Alexander Gordon Morison Senior (The Bognie Trust) dated 28<sup>th</sup> July and registered in the Books of Council and Session on 8<sup>th</sup> August both in the year 1988, having a place of business at BMF Group, Estates Office, Fren draught House, Forgue, Huntly, AB54 6EB.*

Both Ms Carlin and Thornton's solicitors advised that Mr Colin Clark has resigned as a trustee with effect from 31<sup>st</sup> August 2019.

5. Ms Carlin has also asked in her letter of 13<sup>th</sup> April for the designation of the Applicant to be amended to "Mr Alexander Morison, residing at Fren draught House, Forgue, Huntly, AB54 6EB, Mr David Steuart Gordon, residing at Cairnfield, Buckie, AB56 5EL, Mr Grenville Francis Stanbury, residing at 39 The Culvery, Trevanion Road, Wadebridge, PL27 7DX, Mr Roy William Anderson, residing at 3 Westholme Crescent South, Aberdeen, AB15 6AF, Mrs Susan Roy, residing at 34 Whitelea Road, Kilmacolm, PA13 4HH and Mrs Bona McKenzie Murray Morison, residing at Fren draught House, Forgue, Huntly, AB54 6EB, all as Trustees acting under Deed of Trust by Alexander Gordon Morison Senior (The Bognie Trust) dated 28<sup>th</sup> July and registered in the Books of Council and Session on 8<sup>th</sup> August both in the year 1988, having a place of business at BMF Group, Estates Office, Fren draught House, Forgue, Huntly, AB54 6EB" reflecting the current trustees of the Bognie Trust. Ms Carlin had copied this request for an amendment to the sum sought and name of the Applicant to the Respondent.
6. At the CMD Ms Swira confirmed that she is a trainee solicitor and was appearing for the Applicant in Ms Carlin's absence. She moved that an order be granted for the full sum claimed in the amended rent statement namely £4,979 and for the Applicant's name to be changed as per her colleague's letter.
7. Ms Swira confirmed that no further rental payments have been made by the Respondent and there has been no communication received by her clients from the Respondent or her husband and no offer to pay in instalments.
8. The Tribunal noted there has been no further contact or written submissions made to the Tribunal by the Respondent.

- **Findings in Fact**

9. The parties entered into a lease of the Property which commenced on 1<sup>st</sup> October 2019.
10. The Applicant is the heritable owner of the Property.
11. The Rent due in terms of the lease is £433 per calendar month payable in advance
12. The tenant is still residing in the Property.
13. The rent outstanding and not paid as of April 2022 is £4,979

- **Reasons for Decision**

- The Bognie Trust is the owner and landlord in a lease of the Property to the Respondent which lease started on 1<sup>st</sup> October 2019 with a monthly rent due and agreed of £433 payable in advance. This is confirmed in the lease

agreement lodged with the Tribunal and was agreed by the Respondent's husband at the first CMD.

- The names of the Trustees of the Bognie Trust are as set out in the designation of the Applicant above. These 6 trustees are the current trustees and as such entitled to raise this application.
  - The Respondent rent was up to date by 5th February 2021 but payments thereafter were more sporadic with some being missed altogether and others underpaid. There were no further payments made since 1<sup>st</sup> August 2021 and the Tribunal accepted the rent statement lodged by the Applicant's solicitor as being accurate in the absence of any response from the Respondent. The Tribunal notes that Mr Dines admitted on 26<sup>th</sup> January at the first CMD that monies were due and owing and that they wished to make an offer to pay by instalments. No such application has been made to the Tribunal and no offer has apparently been made to the Applicant.
  - The Tribunal accepts the written evidence and verbal statements made by the Applicant's representative, who the Tribunal found clear and credible in her evidence that the rent outstanding as of 1<sup>st</sup> April 2022 amounts to £4979. In the absence of any representations from the Respondent the Tribunal finds it fair and appropriate to make an order for payment for that sum today. There being no application for time to pay the Tribunal makes an order for payment of the sum claimed with interest as stated above.
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- **Decision**
  - An order for payment of the sum of £4,979 is granted

### **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.**

Jan Todd

3<sup>rd</sup> May 2022

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**Legal Member/Chair**

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**Date**