Housing and Property Chamber
First-tier Tribunal for Scotland

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/25/4268

Re: Property at 27 Forres Crescent, Bellshill, ML4 1HL ("the Property")

Parties:

Mr David Clelland, 4 Croftbank Crescent, Uddingston, G71 7JD ("the Applicant")

Miss Lesley Willis, Mr John Ferguson, 15 Register Avenue, Bellshill, ML4 2HF; UNKNOWN, UNKNOWN ("the Respondent")

Tribunal Members:

Alison Kelly (Legal Member) and Eileen Shand (Ordinary Member)

Decision (in absence of the Second Named Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment should be made.

Background

1. A Case Management Discussion ("CMD") took place by telephone conference on 21st January 2026. The Applicant was represented by Mr Kiernan, Premier Properties. The Second Respondent ("LW") was in attendance. The First Respondent ("JF") was not in attendance.

2. The case called in conjunction with an eviction action. The payment case had not been served on LW, she was in attendance because she had had service of the eviction action. LW expressed concern that she has been included in this application as a Respondent, given that the Applicant was fully aware that she has not resided at the Property since 2022, after which the arrears arose. The Tribunal indicated that LW required to take advice on the situation and her joint and several liability for any debt arising under a joint tenancy, which did not appear to have been formally brought to an end. LW was advised to contact a debt advice or housing agency for advice on this matter and to discuss any

further action that may be taken against anyone else involved in this tenancy. The CMD was adjourned.

Subsequent to CMD

3. The Tribunal issued a Direction to the parties. The Applicant was required to provide
   - All rent increase notices served upon both Respondents throughout the tenancy together with evidence of service upon the Respondents.
   - Copies of any written notification given by the Respondents to the Applicant representative when the Second Respondent ceased to occupy the Property in 2022. This may include email correspondence.
   - Copies of all correspondence between the Applicant or their representative and the First Respondent following notice from the Second Respondent in 2022 concerning a change of tenancy or continuation in the sole name of the First Respondent.

4. On 3rd February 2026 the Applicant lodged the documentation which had been requested in the Direction. In the covering email the Applicant's agent accepted that the Applicant knew that LW had left the property in 2022 but commented that at no point had they received a request from either party to alter the terms of the tenancy agreement.

5. On 12th February 2026 LW lodged a Written Submission in which she said that it was her understanding that the tenancy agreement was to be renewed each year and it never was, she left the property as a result of domestic violence and she was unaware of the procedures to end her tenancy and was not given any guidance as to how to have her name removed and that she was aware that the other tenant had begun claiming benefits at one point and she was not involved or aware of how the payments were being handled.

6. On 25th March 2026 the Applicant's representative sent an email to the Tribunal confirming that the tenancy was now at an end and the arrears at the end were £6765.72.

7. On 3rd May 2026 LW lodged a further Written Submission, in which she acknowledged the legal principle of joint and several liability but disputed liability for the rent arrears. She said that she left the property in February 2022. She notified that Applicant's agent. There were no rent arrears when she left. She said that joint and several liability is not an absolute principle to be applied without regard to the facts of the case and that the Tribunal retains the ability to assess reasonableness and fairness in determining whether the sum claimed is properly due from a particular Respondent. She said that liability must be considered in light of occupation, benefit from the tenancy, and the conduct of the parties. She said it would be unreasonable and inequitable to hold her liable for rent arrears arising after her departure because she had permanently vacated the property in 2022, she derived no benefit or use from the property

after that date, she had no control over the tenancy, rent payments, or occupation thereafter and that the Applicant was aware that she had left and was no longer residing in the property. She said that to impose ongoing liability in such circumstances would amount to holding her responsible for obligations over which she had no control and from which she derived no benefit.

Continued Case Management Discussion

8. A Continued Case Management Discussion ("CCMD") took place by telephone conference on 18th May 2026. The Applicant was represented by Mr Kiernan, Premier Properties. The Second Respondent ("LW") was in attendance. The First Respondent ("JF") was not in attendance.

9. The Chairperson confirmed the purpose of a CMD in terms of Rule 17 of the Tribunal's Rules.

10. Mr Kiernan said that he was instructed to seek a payment order in the amount of £6765.72 against both Respondents. He said that the tenancy ended on 12th March 2026. The applicant had to instruct Sheriff Officers to evict JF. He said that the arrears had begun to accumulate in 2023 when JF lost his job. The Applicant had been prepared to park the arrears for a period and, when JF gained new employment, a payment plan was entered in to. However, JF did not stick to the plan and refused to pay anything that was overdue. Things spiralled. No rent was paid by JF after the eviction proceedings were raised. The bulk of the arrears were accrued between August 2025 and March 2026. He accepted that the Applicant was aware that LW had left the property in 2022, but no formal request was made by either party to alter the tenancy agreement.

11. LW said that she spoke to the Citizen's Advice Bureau, and they had prepared the Written Submission for her. The Chairperson went through the submission with her and asked if she had any legal authority, for example legal texts or case law, to establish her contentions that the landlord had any responsibility to guide her in how to bring the tenancy to an end, or that joint and several liability is not an absolute principle. She said that she had provided what she was given by the CAB. The Chairperson explained that the onus was on LW to prove her position.

12. As there was a question of law to be argued the Chairperson decided that a Hearing was necessary. It was also decided as that there was no dispute about factual matters, and therefore no need to determine credibility or reliability, the Hearing could take place by teleconference.

13. It was agreed that the tenancy ended on 12th March 2026. It was also agreed that LS left the property in early 2022 and that there were no rent arrears at that time.

14. Matters in dispute were whether the Applicant had any responsibility to provide guidance to LW on how to end her tenancy, and whether joint and several liability is an absolute principle.

15. The case was adjourned to a Hearing to take place by teleconference, the date to be advised.

Subsequent to Continued CMD

16. A Direction was issued to the parties as follows:

The Applicant is required to provide:

1. *A copy of the tenancy agreement. (There is no copy with the case papers. The Legal Member did not sit on the eviction case and the papers in that case have now been deleted form the Tribunal's system)*

The said documentation should be lodged with the Chamber no later than close of business on 30th July 2026.

The Second Named Respondent is required to provide:

1. *A Written Submission outlining the law, be it from legal text books, statute or case law (the cases to be lodged in full) in relation to the Second Named Respondent's contentions that the landlord has a duty to provide guidance on how to terminate the tenancy, and that the principle of joint and several liability in a contract is not an absolute principle and can be deviated from.*

The said documentation should be lodged with the Chamber no later than close of business on 30th July 2026.

17. On 1st June 2026 the Applicant lodged a copy of the tenancy agreement.

18. On 28th July 2026 the Respondent lodged a Written Submission in which she conceded that there was no express legal duty on a landlord to advise tenants on how to terminate a tenancy but stated that the facts of this case are exceptional. She said that the landlord and his letting agent were aware that she had permanently vacated the property in February 2022 and that only the First Named Respondent remained in occupation. She said that despite this knowledge, no steps were taken to explain the implications of her continued status as a joint tenant or to seek to regularise the tenancy, while substantial rent arrears accrued solely as a result of the remaining occupier's failure to pay rent. She said that she accepted that joint tenants are generally jointly and severally liable under Scots law, but she submitted that the Tribunal is entitled to consider the particular facts and circumstances of this case when determining whether it is fair and appropriate to hold her liable for rent arrears that arose entirely after she had permanently left the property. The first missed rent payment did not occur until 2023, over a year after her departure, and she neither occupied nor benefited from the tenancy during that period. Her

submission was not that the principle of joint and several liability should be disregarded, but that the Tribunal should consider the landlord's knowledge of her departure, the chronology of events, and the fact that the losses claimed were caused solely by the actions of the remaining tenant.

19. Service on JF was carried out by advertisement. The Tribunal produced a Certificate of Service By Advertisement dated 27th October 2026.

Hearing

20. The Hearing took place by teleconference on 27th October 2026. The Applicant was represented by Mr Kiernan, Premier Properties. The Second Respondent ("LW") was in attendance. The First Respondent ("JF") was not in attendance.

21. The Chairperson made introductions and went over the Continued Case Management Discussion Note.

22. Mr Kiernan confirmed that the Applicant was aware of the circumstances, and that LW had left the property before any arrears accrued, and his instructions were to seek a payment order in the amount of £6765.72 against both Respondents.

23. The Chairperson took LW through her Written Submission made in her email of 28th July 2026. She confirmed that that was her position, she had nothing to add, and she had no legal authorities to back it up.

24. LW asked about the deposit that had been paid at the beginning of the tenancy. Mr Kiernan explained that the property had been in a bad state after JF was evicted. A lot of work had to be carried out, and the Applicant applied to the tenancy deposit scheme for return of the full deposit of £890, which he received.

Findings In Fact

i. The parties entered in to a Private Residential Tenancy in relation to the property;
ii. The Model Agreement produced by the Scottish Government was used as the template for the tenancy agreement;
iii. The tenancy agreement had a commencement date of 16th February 2019;
iv. In the tenancy agreement "the tenants" are Lesley Willis and John Ferguson;
v. Clause 1 of the tenancy agreement states
"Where this is a joint tenancy, 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";
vi. LW vacated the property in 2022;
vii. The Applicant's agents were informed by LW that she had left the tenancy;
viii. The Applicant's agent did not receive a request from LW to amend the tenancy

agreement;

ix. The Applicant's agent approached JF about taking on a sole tenancy, but he did not reply;
x. Clause 24 of the tenancy agreement states " 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.";
xi. Rent arrears began to accrue after LW left the property;
xii. An eviction order was granted by the Tribunal on 21st January 2026;
xiii. The tenancy came to an end 12th March 2026 when JF was evicted;
xiv. Rent arrears of £6765.72 were due at the end of the tenancy;
xv. The deposit of £890 was returned to the Applicant by the tenancy deposit scheme in relation to damage to the property.

Reason For Decision

25. The Tribunal has a considerable degree of sympathy for LW, but unfortunately, whatever the morality of the situation, the law is not on her side.

26. Private Residential Tenancies came in to being on 1st December 2017 following the enactment of the Private Housing(Tenancies)(Scotland) Act 2016. The Scottish Government produced a Model Tenancy Agreement which is available on the Scottish Government website for use by landlords and tenants. There is also a set of Easy read Notes, which are readily available online, which explain the terms of the contract. The Applicant used the model tenancy. The tenancy agreement makes it clear at Clause 1 that there is joint and several liability in relation to all obligations of the tenancy. Clause 24 makes it clear that one joint tenant cannot bring the tenancy agreement to an end without the agreement of the other.

27. A Private Residential Tenancy is a legally binding contract. Members of the public enter in to contracts every day and the onus is on them to ensure that they understand what they are agreeing to. There is no obligation on a landlord to ensure that a tenant understands every clause. There is no obligation on a landlord to advise a tenant on how to bring a tenancy agreement to an end. A person entering in to a contract is free to seek advice from a solicitor or advice agency before doing so and is also free to seek that advice when looking to bring obligations to an end.

28. Given that the obligation of joint and several liability is contained in the Model Agreement it is unlikely that it could be found to be an unfair contract term.

29. The Scottish Government will enact section 44 of the Housing (Scotland) Act 2025 on 1st April 2027. This section provides a mechanism for one joint tenant to bring the tenancy to an end.

30. The Tribunal, however, must follow the current law and therefore grants the order for payment against both Respondents.

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.

Alison Kelly

27th October 2026

Legal Member/Chair **Date**