

Housing and Property Chamber
First-tier Tribunal for Scotland



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/17/0548

Re: Property at 158 Main Street, East Calder, Livingston, EH53 0HE ("the Property")

Parties:

Ms Sara Sangtangeli, Ms Anna Tanzi, 17 Market Street, Haddington, EH41 3JL ("the Applicant")

Mr Kevin Byrne, 158 Main Street, East Calder, Livingston, EH53 0HE ("the Respondent")

Tribunal Members:

Fiona Watson (Legal Member)
Gordon Laurie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that:

- **Background**

An Application was made to the First-Tier Tribunal under Rule 70 on 19 December 2017. A Case Management Discussion took place on 15 February 2018 at which a Hearing was assigned for 11 April 2018.

- **The Hearing**

Victoria Rae of Jackson Boyd LLP appeared on behalf of the Applicant. The Respondent appeared personally, supported by his father, Samuel Byrne. Miss Rae asked the Tribunal to grant the Application as sought. Miss Rae submitted that payment had been made to the Applicant's property manager (Pure Property Management) in the sum of £7051.79 as at 6 March 2018. She was unable to provide an up to date figure to the Tribunal. Miss Rae

confirmed that the sums held equated to the arrears due. Miss Rae submitted that the Applicant was unable to accept the funds paid by West Lothian Council as the funds had been paid under the name of Charlene Campbell and as such, if said funds were accepted, the Applicant would be deemed to have created a tenancy with Miss Campbell by default. Miss Rae submitted that the Applicant's managing agents had made contact with West Lothian Council seeking their bank details in order that the funds could be returned to them. Miss Rae submitted that the funds could not be accepted and accordingly an arrear was due by Mr Byrne as a result. Miss Rae did not present the Tribunal with any legal authorities whatsoever.

Mr Byrne produced to the Tribunal an email from a Section Leader at West Lothian Council dated 19 February 2018 which appeared to have been sent to Pure Property Management and Charlene Campbell, which stated as follows:

"West Lothian Council have a claim for Housing Benefit for Charlene and Kevin however the claim was made in the name of Charlene. We have been paying Housing Benefit on this property under claim reference number 59530 and although the claim is in the name of Charlene, Kevin Byrne is the partner on this claim.

I can confirm that any Housing Benefit paid to date for this property in the name of Charlene is in fact Housing Benefit to cover rental cost in respect to Kevin Byrne's tenancy. To date we have paid £6501.79 and a further payment of £550 is due to credit."

Miss Rae confirmed that she had not seen this email prior to the Hearing. The validity of the email was not disputed by the Miss Rae.

Miss Rae submitted that the Respondent did not have written consent for Charlene Campbell to reside in the property, as was required by Clause 12.1 of the Tenancy Agreement. The Respondent denied this and submitted that he had called Pure Property Management and advised them that Miss Campbell would be moving into the property and claimed that Pure Property Management confined to him that this was acceptable.

- Findings in Fact

The Applicant's agent was holding the sum of £7051.79 at 6 March being payments made by West Lothian Council. This sum equated to the arrears due at that date.

The Respondent was named as a Partner on the Housing Benefit claim.

Payments under the said Housing Benefit claim were payments to cover rental costs under the Respondent's tenancy.

- **Reasons for Decision**

No legal authorities were referred to by the solicitor on behalf of the Applicant to support her submission that the funds could not be accepted due to the risk of creating a tenancy with Miss Campbell by default.

The email from West Lothian Council provided a clear summary of the Housing Benefit claim. The claim was in the name of Charlene Campbell and the Respondent was noted as a partner on the claim. Further, the payments were being paid to cover rental costs in respect of the Respondent's tenancy.

The Tribunal was not satisfied that there was any legal authority to hold that the Applicant was not entitled to accept the moneys paid by West Lothian Council as payment of rent under the Respondent's tenancy.

The tribunal was not satisfied that an arrear of rent had in fact accrued.

The fact that clause 12.1 of the tenancy agreement may have been breached had no bearing on the issue of acceptance of payments made by West Lothian Council.

- **Decision**

The Tribunal unanimously determined that the application should be refused.

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

F Watson

Legal Member/Chair

11/4/18.

Date