



**Decision with Statement of Reasons 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/18/1305**

**Re: Property at 2A The Ward, Strathaven, ML10 6AS (“the Property”)**

**Parties:**

**Scottish Midland Co-operative Society Ltd, Hillwood House, 2 Harvest Drive,  
Newbridge, EH28 8QJ (“the Applicant”)**

**Mrs Peggy Brown, 7 Douglas Street, Strathaven, ML10 6BU (“the Respondent”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member) and Elizabeth Currie (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that**

**Background**

This is an application for a payment order dated 23<sup>rd</sup> May 2018 and brought in terms of Rule 70 (Application for civil proceedings in relation to an assured tenancy under the 1988 Act) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”).

The Applicant seeks payment of arrears in rental payments of £2,721.99 in its application form from the Respondent, who is guarantor in terms of the lease agreement.

The short assured tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the tenant has left the Property.

A Hearing was held on 8<sup>th</sup> November 2018 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant did not appear, but was represented by Mr Runciman, solicitor. The Respondent appeared, but was not represented.

After hearing evidence from two witnesses, the Applicant's Mr Williamson and the Respondent, the Tribunal rose to consider the evidence which it had heard.

The Tribunal was concerned that it would be unjust to determine the case without permitting the applicant to produce further evidence on matters which had been brought up, quite properly, by the Respondent in her evidence and in the course of the hearing, and which matters were critical to the Tribunal being able to reach a determination in relation to the key areas of dispute between the parties.

The Respondent disputed that she had provided documents to the Applicant's letting agent for the purposes of a credit check, and disputed that she had been advised of what it was that she was being asked to sign. She also noted that the calculation of sums due by the tenant which remained unpaid was extremely difficult to follow, a view which the Tribunal shared, and which the Applicant candidly accepted, on reflection, was a legitimate comment.

The overriding objective of the Tribunal is to deal with proceedings justly and in a manner which is proportionate to the complexity of the issues and the resources of the parties in terms of Rule 2 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended. That being so, the Tribunal adjourned the Hearing to allow the Applicant to respond to, and address, these points in evidence.

### **The Continued Hearing**

A continued hearing was held on 8<sup>th</sup> January 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant's Mr McLean and Mr Williamson appeared, and the Applicant was again represented by Mr Runciman, solicitor. The Respondent appeared, but was again not represented.

At the continued hearing, the Applicant led evidence by conference call from Jan Dawson, of the Applicant's former letting agent, Hemmings Hanlon Clerk. It also produced a further rent arrears statement.

After hearing all the evidence led by both parties, the Tribunal found in fact:

- 1) That the Respondent attended at the Applicant's letting agent's offices on 24<sup>th</sup> April 2015 with her grandson, Kenneth McEwan.
- 2) That Kenneth McEwan signed a tenancy agreement for the let of the Property on said date as the tenant, and that the Respondent also signed that tenancy agreement as guarantor.
- 3) That the Respondent had previously supplied the Applicant's letting agent with a photo ID card, and a bank statement and TV licence disclosing her home address. She had provided these to allow the Applicant's letting agent

to conduct a credit check upon her for the purposes of the Applicant accepting her as guarantor on the tenancy agreement.

- 4) That prior to her signing the agreement, the Applicant's letting agent explained to the Respondent that she was signing the lease agreement as guarantor, explained to her the effect and implications of her doing so, and advised her that she might wish to seek legal advice before signing.
- 5) That in terms of the lease agreement, and in particular clause TWENTY SEVENTH thereof, the Respondent as guarantor is liable under the agreement for the whole obligations of the tenant.
- 6) That the tenant left the premises on 26<sup>th</sup> July 2016.
- 7) That the tenant left arrears totalling £2,721.99, together with a liability for the cost of cleaning the Property after his departure and removing and disposing of belongings which he had failed to remove.

We were invited by Mr Runciman to allow the sum sought in the application to be amended to the sum of £3,057.99, by the addition of the cost of cleaning the Property and removing and disposing of the tenant's belongings. The Respondent did not oppose that amendment, which we duly allowed.

With reference to the application and papers including the updated rent arrears statement, Mr Runciman invited us to grant an order for payment of the amended sum of £3,057.99.

The Respondent invited us to refuse the order, upon the basis that she had not been told what it was that she was signing, and did not understand the legal consequences of her doing so.

Mr Runciman also sought to amend the application to seek contractual interest on the outstanding sum in terms of clause THIRD (B) of the agreement, in place of the judicial rate from the date of citation narrated in the application. The Respondent did not oppose that amendment, which we also allowed.

Finally, Mr Runciman moved us to grant an award of expenses against the Respondent upon the basis that her unreasonable conduct had caused his client to incur unnecessary expense in this application. The Respondent opposed this motion.

### **Statement of Reasons**

Section 16 of the *Housing (Scotland) Act 2014* provides as follows:

"16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3) Part 1 of schedule 1 makes minor and consequential amendments.”

Accordingly, the Tribunal now has jurisdiction in relation to claims by a landlord (such as the Applicant) for payment of unpaid rental against a tenant (such as the Respondent) under a short assured tenancy such as this.

The Tribunal found Mr Williamson and Ms Dawson to be credible and reliable witnesses.

They both explained that it is standard and universal practice in the letting agent industry to fully explain to a potential guarantor of a tenancy agreement the legal consequences of what they are being asked to sign, that they may be liable for all the financial and other obligations of the tenant, and that they might wish to take independent legal advice before signing.

Unfortunately, the particular member of staff who was present when the Respondent signed the lease, Lesley Martin, has left, and it has not been possible to trace where she now is.

However, Ms Dawson was able to view the Applicant's letting agent's computerised file, and was able to give evidence of what had taken place, both with reference to that file and through knowledge of the standard procedure which she told us all staff at the Applicant's letting agent always followed.

She also knew Ms Martin well when she worked with her, describing her as every experienced and competent. Ms Martin has previously worked for the Bank of Scotland, and was very familiar with the duty to fully explain to both potential tenants and potential guarantors the nature and legal consequences of any legal agreement which they were being asked to sign.

Ms Dawson considered that there was no possibility that Ms Martin would not have explained to the Respondent the implications of her signing as guarantor, and would not have simply placed a document before the Respondent and asked her to “just sign here” without explaining what was happening and allowing the Respondent to read the document, as the respondent alleges occurred.

The Tribunal found the Respondent to be credible, in that we did not form the impression that she was deliberately lying in her evidence or trying to mislead, but that she was simply not credible in relation to the essential issues.

Her recollection of events appeared muddled, and there were many aspects of the circumstances which she was simply unable to explain or account for.

For example, she stated that she had not provided her photo ID card, and a bank statement and TV licence disclosing her home address to the Applicant's letting agents for the purposes of a credit check.

The Applicant produced a copy of the credit check report dated 13<sup>th</sup> April 2015 (some 11 days before the Respondent and Kenneth McEwan signed the lease agreement) together with copies of the photo ID card, and a bank statement and TV licence.

The Respondent confirmed that these documents were hers, denied that she had provided those to the Applicant's letting agents, but was unable to explain how the Applicant's letting agent might be in possession of those documents if she did not provide them.

The Respondent was also insistent that the principal lease agreement produced by the Applicant was not the document that she had signed at the Applicant's letting agent's offices.

However, she confirmed that the principal lease agreement produced bore her signature and was the tenancy agreement relating to the Property, but was again unable to explain how, why, or when she came to sign that document if it was not the one which she signed on 24<sup>th</sup> April 2015 with her grandson.

In these circumstances, the Tribunal was unable to accept the Respondent's account of events relating to the circumstances in which she signed any document on 24<sup>th</sup> April 2015 with her grandson, and preferred the evidence led on behalf of the Applicant on those matters.

That being so, the Tribunal was satisfied that the Respondent did sign the lease agreement as guarantor, and at that time appeared to be aware of the consequences of doing so.

In particular, the evidence of Ms Dawson and Mr Williamson, together with the fact that the Respondent appears to have provided various documents needed for a credit check to be undertaken upon her in advance of her signing the agreement, both persuade us that she was (at least at that time) fully aware of what she was being invited to sign and its legal implications.

Accordingly, the Respondent is liable under the terms of the agreement for the tenant's obligations. We are satisfied by the evidence of the Applicant regarding the sum outstanding and interest due upon that sum, which were not disputed by the Respondent, and will make an order for payment of that sum by the Respondent to the Applicant with interest at the rate of four per cent above the base-lending rate of the Royal Bank of Scotland plc from the due date until paid, compound calculated monthly.

Finally, though we have some sympathy with the Applicant's frustration at the Respondent's ultimate position in this application, we do not consider that she exhibited unreasonable behaviour in the conduct of this case, and accordingly we will not make an award of expenses against her.

Though the Respondent's position was ultimately not accepted by us, we do not consider that she behaved unreasonably in asserting it in her defence of this application.

## Decision

In these circumstances, we will make an order for payment by the Respondent to the Applicant of the sum of £3,057.99 with interest thereon at the rate of four per cent above the base-lending rate of the Royal Bank of Scotland plc from the due date until paid, compound calculated monthly.

## 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. KINNEAR

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Legal Member/Chair

08/01/19  
\_\_\_\_\_  
Date