



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 71 (1) of the Private Housing  
(Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/20/0533**

**Re: Property at 29 Cameron Crescent, Hamilton, South Lanarkshire, ML3 6NT  
("the Property")**

**Parties:**

**Mr Gerald Kelly, 29 Wellhall Road, Hamilton, South Lanarkshire, ML3 9BN ("the  
Applicant")**

**Mr Gary Russell, Ms Victoria Russell, Address Unknown, Address Unknown  
("the Respondent")**

**Tribunal Members:**

**Petra Hennig-McFatridge (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the  
Tribunal") determined that an order for payment of £4,275 should be granted in  
favour of the Applicant.**

**Background**

This is an application for payment of outstanding rent in terms of S 71 (1) of the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act) against the Respondent Mr Russell as tenant and against the Respondent Mrs Russell as Guarantor.

The Applicant is seeking payment of arrears of rent as per the rent schedule attached to the application, which shows arrears of rent of £4,275 as at 14 February 2020. The Applicant had lodged the tenancy agreement, Deed of Guarantee and rent statement with the original application.

No further rent statement has been submitted.

A Case Management Discussion (CMD) had been previously scheduled, but service on the Respondents was not successful and Sheriff Officers reported on 31 July 2020 that both Respondents had moved.

Service of the Notifications and papers for the CMD on 5 October 2020 was thus carried out by advertisement for both Respondents in terms of Rule 6 A of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (the Rules).

### **The Case Management Discussion**

The Applicant participated in the CMD held by telephone conference on 5 October 2020. The Respondents did not participate. The tribunal is satisfied that service by advertisement had been carried out on the Respondents.

The Applicant advised that Mr Russell had moved out of the property after an eviction order had been granted. The rent arrears as per the rent statement are still outstanding. The Applicant also stated that further sums may be due as there had been damage to the property which was only partially covered by the deposit. The deposit had been returned to the Applicant but did not affect the arrears as shown on the rent statement. The Applicant indicated that he may raise a further payment action for any other claims under the tenancy agreement.

The Applicant confirmed that "the Agreement" referred to in clause 1 of the Deed of Guarantee was the tenancy agreement for the property between him as landlord and Mr Russell as tenant commencing on 21 January 2019.

In terms of Rule 18 of the Rules of Procedure the Tribunal is satisfied that it is not contrary to the interests of the parties to make a decision at the CMD and that the information available in document form and from the Applicant at the CMD allows sufficient findings to determine the case.

### **The tribunal considered the following documents in terms of Rule 18:**

1. The application received on 14 February 2020 for an order for payment and attached correspondence
2. Tenancy Agreement commencing 21 January 2019
3. Rent statement for the period of 23 January 2019 to 14 February 2020
4. Deed of Guarantee between the Applicant and Ms Russell, Respondent dated 21 January 2019

### **Findings in Fact**

1. The parties entered into a Private Residential Tenancy Agreement for the property on 21 January 2019 (Clause 6)
2. As at 14 February 2020 the Respondent Mr Russell was still the tenant for the property.
3. Rent of £475 per calendar month was payable in advance on the 21 day of the month (Cause 8).
4. From 21 May 2019 to 14 February 2020 no rental payments were made.

5. As at the date of the application on 14 February 2020 rent arrears of £4,275 had accrued.
6. No payment has been made for these arrears as at the date of the CMD on 5 October 2020.
7. Ms Victoria Russell as Guarantor is liable jointly and severally with Mr Gary Russell for payment of rent if the Tenant defaults in such payments.

### **Reasons for decision**

The Respondents had not participated in the CMD and had not made any written representations to the Tribunal. The application proceeds as undefended.

Mr Russell as tenant of the property was liable to pay rent for the amount of £475 per month in advance to the Applicant. No rent was paid between 21 May 2019 and 14 February 2020. The Applicant is entitled to payment of the outstanding amount for that period from the Tenant in terms of Clause 8 of the Tenancy Agreement.

In terms of 71 of the Private Housing (Tenancies) (Scotland) Act 2016 : " First-tier Tribunal's jurisdiction: (1)In relation to civil proceedings arising from a private residential tenancy—(a)the First-tier Tribunal has whatever competence and jurisdiction a sheriff would have but for paragraph (b), (b)a sheriff does not have competence or jurisdiction. (2)For the purposes of subsection (1), civil proceedings are any proceedings other than—(a)the prosecution of a criminal offence, ( b)any proceedings related to such a prosecution."

The Tribunal is satisfied that the proceedings against Ms Russell as Guarantor "arise from" the Private Residential Tenancy entered into between the Applicant and Mr Russell. The Deed of Guarantee in Clause 1 refers to the Guarantee being entered into "in consideration of the Landlord agreeing to my / our request to accept Gary Russell as the Tenant of the Property known as 29 Cameron Crescent Hamilton, South Lanarkshire ML3 6NT upon the terms and conditions of the agreement attached hereto ("the Agreement"). "

The Agreement referred to is the Tenancy Agreement between the Applicant and Mr Russell.

In cases where a tenancy agreement and a guarantee agreement are explicitly linked it has been confirmed in the Upper Tribunal decision UTS/AP/19/0012 Kenneth Anderson v the First-tier Tribunal for Scotland on 24 July 2019 that the First-tier Tribunal has jurisdiction in terms of S 71 Of the 2016 Act not only for an application relating to rent arrears owed by the tenant but also for payments due by the Guarantor if the tenant defaults in his payments. .

The Rent arrears accrued as stated in the rent statement submitted. The Guarantor in terms of Clause 1 (a) of the Deed of Guarantee agreed to pay rent if the Tenant defaults. In terms of Clause 4 the Guarantor's liability is joint and several with the Tenant.

The Tribunal grants the order of payment of the amount of £4,275 to the Applicant by the Respondents jointly and severally as rent lawfully due remaining outstanding for the period of 21 May 2019 to 14 February 2020.

## **Decision**

**The Tribunal grants an order against the Respondent for payment of the sum of £4,275 to the Applicant.**

## **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.**

**Petra Hennig McFatridge  
Legal Member**

**5 October 2020  
Date**