



**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/21/2818

Re: Property at 16 Dickson Avenue, Dundee, DD2 4EG (“the Property”)

Parties:

**Mrs Kirsty McNally, Mr Mark McNally, 53 Dalrymple Terrace, Dundee, DD2 2DZ
 (“the Applicant”)**

**Ms Laurie Field, Mr Cameron Campbell, G/1 44 Balgarthno Terrace, Dundee,
DD2 4EG; 6E Aboyne Avenue, Dundee, DD4 7SZ (“the Respondent”)**

Tribunal Members:

Mary-Claire Kelly (Legal Member)

Decision in absence of the second respondent

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for payment of the sum of £8201.58. The Tribunal made a time to pay direction under Section 1(1) of the Debtors (Scotland) Act 1987 requiring the respondents to pay instalments of £250 per month until such time as the debt is repaid.

Background

1. By application dated 5th November 2021 the applicants seek an order for payment in the sum of £8201.58 comprising £6025 rent arrears with the remaining amount due for repairs which required to be carried out to the property.
2. A case management discussion (“cmd”) took place by teleconference on 24th January 2022. The applicants were represented by Ms Royle, solicitor from

Gilson Gray solicitors. Both respondents were present. Prior to the case management discussion, Ms Field had lodged an application for a time to pay direction.

3. At the cmd on 24th January 2022, Mr Campbell disputed that he was liable for the sums being sought. He advised the Tribunal that he had never signed the tenancy agreement. His position was that the signature on the document was not his. Mr Campbell confirmed that he had moved into the property at the commencement date of the tenancy i.e., 31st August 2019. He explained that he had moved out of the property on 13th October 2019. He was unable to provide a specific date for when notification was given to the applicants' agents that he had left the property however, he stated that the landlord's agents had contacted him via a message on Facebook and he had confirmed by return message that he had left the property. He had moved into a new tenancy by February 2020 and notification had certainly been given by then. Mr Campbell had not lodged any written representations in advance of the case management discussion.
4. Ms Field confirmed that she had signed the tenancy agreement prior to commencement. She had no recollection of how or when Mr Campbell signed the agreement. She explained that they had looked for the tenancy together and moved in together and she had thought of it as a joint tenancy when it commenced.
5. Ms Field accepted that the amount sought by the applicants was lawfully due. During the cmd, parties discussed the time pay application submitted by Ms Field. Ms Royle advised that the offer to repay the debt at £150 per month was unacceptable to the applicants as it would take too long to repay the debt. Ms Field indicated that she might be able to increase the amount being offered
6. The case was adjourned to a further cmd on 14th March 2022. The Tribunal requested that Mr Campbell provide evidence of his written notification that he had left the property to the applicants' letting agents. The Tribunal also requested that he provide copies of his signature for comparison purposes. The adjournment would also allow Ms Royle to take instructions on the matters which had been raised by Mr Campbell for the first time at the cmd.

Case management discussion – 14th March 2022 – teleconference

7. Ms Royle attended on behalf of the applicants. Ms Field was present. Mr Campbell was not in attendance. The Tribunal was satisfied that Mr Campbell had been properly notified of the cmd and proceeded with the discussion in his absence.
8. Ms Royle asked the Tribunal to grant an order for payment in the full amount. She submitted that the tenancy agreement was valid. Mr Campbell had moved into the property when the agreement commenced. He had failed to provide proper written notice to his landlords to notify them when he had moved out. Accordingly, he remained jointly and severally liable for the outstanding debt.
9. Ms Royle referred to an email between Ms Field and the letting agents, Rent Locally dated 17th March 2021. In that email Ms Field advised the letting agents that Mr Campbell had not lived in the property for over a year. She explained that by that stage arrears were already in excess of £3500. The email did not in any event constitute proper written notice from Mr Campbell to terminate the tenancy agreement.
10. Ms Royle also referred to letters addressed to Mr Campbell which had been lodged. She submitted that they showed that Mr Campbell had continued to use the property for correspondence until recently.
11. The Tribunal noted that Mr Campbell had lodged copies of text messages dating from July 2021 prior to the cmd. In the text messages he explained that he had moved out of the property some time before, however no copy of a written notification terminating Mr Campbell's interest in the lease had been lodged prior the cmd, as had been requested after the previous cmd.
12. Ms Field explained that when she had moved into the tenancy, she had thought it was a joint tenancy with Mr Campbell. They had gone to look at the property together and moved in together. Mr Campbell had moved out in October 2019 after approximately six weeks. She was certain that she had notified the letting agents that Mr Campbell had moved out before the email sent on 17th March 2021, however she was unable to recall any specifics of how she communicated with the letting agents or when they would have been aware that Mr Campbell had moved out.

Time to pay application

13. The Tribunal proceeded to consider the time to pay application submitted by Ms Field. Ms Field explained that she accepted liability for the full amount sought by the applicants. She wished to increase her offer to repay to £250 per month.

14. The Tribunal had regard to the terms of Section 1A of the Debtors (Scotland) Act 1987 which sets out the factors it requires to take into account in determining a time to pay application namely:

(a) the nature of and reasons for the debt in relation to which decree is granted;

(b) any action taken by the creditor to assist the debtor in paying that debt;

(c) the debtor's financial position;

(d) the reasonableness of any proposal by the debtor to pay that debt; and

(e) the reasonableness of any refusal by the creditor of, or any objection by the creditor to, any proposal by the debtor to pay that debt.

15. The Tribunal heard from Ms Field that she had begun to struggle to pay the monthly rent after her relationship with Mr Campbell ended and the household income dropped after he moved out. Around the same time, she required to reduce her working hours due to her son's ill health. Her son, who is aged 4 suffers from chronic lung disease and for a period of time Ms Field had to reduce her hours of work to look after him. Ms Field's evidence was that due to these combined factors she was under a great deal of stress at the time the arrears began to build up.

16. Ms Field advised that she is employed as an early years educator by Dundee City Council. She has been in the same employment for nine years. Her monthly income is £1100 earnings. In addition, she receives approximately £300 per month top up from universal credit.

17. Ms Field explained that she had discussed her financial difficulties with the letting agents as the debt grew and had hoped to receive benefits that might assist with making payments. That had not happened. She advised that she

now resides in a local authority tenancy where the rent is £310 per month. Ms Field went through her monthly expenditure. She explained that her petrol costs had reduced slightly. However, there was now some uncertainty as to her utility outgoings and it was likely that the amount due would increase significantly. She explained that she could reasonably afford £250 per month towards the debt after payment of her usual outgoings.

18. Ms Royle opposed the time to pay application. She submitted that both respondents were liable for the debt and Mr Campbell's income should also be taken into account. She submitted that the applicants should be able to pursue both respondents for the debt. If the time to pay application were granted this would mean that Mr Campbell would not have to contribute towards payment of the debt.

19. Ms Field reiterated that the arrears and other sums due to the applicants had amassed after Mr Campbell had left the tenancy and she accepted responsibility for them and wished to repay the debt rather than Mr Campbell.

Findings in fact

20. Parties entered into a private residential tenancy agreement which commenced on 31st August 2019.

21. Rent arrears in the sum of £6025 were outstanding after the first respondent moved out of the property on or around 31st July 2021.

22. £2176.58 was paid by the applicants in respect of repairs which required to be carried out after the first respondent moved out of the property.

23. The first respondent accepts liability for the sum of £8201.58

Reasons for the decision

24. The Tribunal took into account the application and other written documents lodged by parties as well as their verbal representations at the cmd. Mr Campbell had disputed the validity of the tenancy agreement at the previous cmd on 24th January 2022. However, he failed to attend the cmd on 14th March 2022 to pursue his defence or to lodge any documents other than copies of his signature and text messages dating from July 2021, setting out his defence. The Tribunal was satisfied, taking into account the evidence of Ms Field and

Ms Royle's submissions that a joint tenancy was created at 31st August 2019. The Tribunal accepted that whilst Mr Campbell had moved out of the tenancy not long after it commenced, no proper written notice was given to the applicants or their letting agents. In terms of paragraph 24 of the tenancy agreement Mr Campbell required to provide 28 days written notice. He had failed to do that and accordingly, Mr Campbell remained a joint tenant.

25. In relation to the time to pay application the Tribunal had regard to section 1A of the Debtors (Scotland) Act 1987 and parties submissions. The Tribunal noted that the arrears had built up due to a change in Ms Field's personal circumstances which were beyond her control. The Tribunal considered that the offer of £250 per month was a reasonable offer taking into account Ms Field's income and outgoings. The Tribunal noted that Ms Field had a permanent and secure job which made it more likely that payments would be maintained. The Tribunal noted that the outstanding amount would be repaid in approximately 32 months. In all the circumstances the Tribunal determined it reasonable to make a time to pay direction requiring payment at the rate of £250 per month.

Decision

The Tribunal determined to grant an order for payment of the sum of £8201.58 with a time to pay direction in terms of the Debtors (Scotland) Act 1987 requiring monthly instalments of £250.

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.

Mary Claire Kelly

Legal Member/Chair

14th March 2022
Date