



**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/22/0011**

**Re: Property at 135 Harburn Drive, West Calder, EH55 8AW (“the Property”)**

**Parties:**

**Fairway Homes Ltd, 61 Murieston Road, Livingston, EH54 9AZ (“the Applicant”)**

**Ms Lesley McCormack, Mr Jonathan McCormack, 26 The Glebe, West Calder, EH55 8BN; 135 Harburn Drive, West Calder, EH55 8AW (“the Respondent”)**

**Tribunal Members:**

**Andrew McLaughlin (Legal Member)**

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

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

**Background**

The Applicant seeks a Payment Order in the sum of £6,370.00 said to have been accrued by the Second Respondent, Mr Jonathan McCormack as rent arrears under a tenancy. The First Respondent, Ms Lesley McCormack is a guarantor under the tenancy and both Respondents are said to be jointly and severally liable for the sums claimed.

**The Case Management Discussion**

The Application called for a Case Management Discussion (CMD) by conference call at 10 am on 22 April 2022. The Applicant was represented by its sole director, Mr Andrew Finch. Ms Lesley McCormack was present on the call. There was no appearance by the Second Respondent, Mr Jonathan McCormack.

Sheriff Officers had competently served the Application and information about how to join the conference call on Mr McCormack. The Tribunal also delayed the start of the CMD for a few minutes to allow Ms McCormack to phone Mr McCormack to see where he was. Ms McCormack is Mr McCormack's mother. Mr McCormack however did not join the call and so the Tribunal decided to proceed in his absence.

Mr McCormack had lodged a Time to Pay Application with the Tribunal in advance of today's CMD. That had been opposed by the Applicant and consideration of it was continued to today's CMD. In that Time to Pay Application the Respondent had admitted liability for the sums claimed.

Ms McCormack acknowledged that she was guarantor and confirmed that she and her son were not on good terms. Ms McCormack could not offer any potential defence to the Application.

Having considered the documentation and after having heard from parties, the Tribunal made the following findings in fact:

### **Findings in Fact**

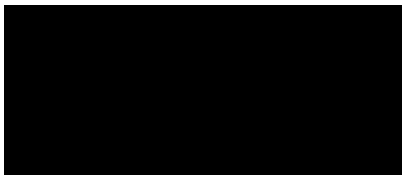
- I. *The Applicant and the Second Respondent, Mr Jonathan McCormack entered into a tenancy agreement in respect of the Property. The Applicant was the landlord and Mr McCormack was the tenant. The First Respondent, Ms Lesley McCormack signed the tenancy as a guarantor and undertook personal liability for guaranteeing the payment of rent due under the tenancy;*
- II. *The tenancy commenced on 4 March 2020 and the contractual monthly rent due was £695.00*
- III. *Mr McCormack fell into rent arrears and left the Property owing the Applicant the sum of £6,370.00 as unpaid rent;*
- IV. *Both Respondents are jointly and severally liable to the Applicant for these sums by virtue of the guarantee signed by Ms McCormack.*

## **Reasons for Decision**

Having made the above findings in fact and noting that Mr McCormack was not present to support the Time to Pay Application previously made, the Tribunal decided to refuse the Time to Pay Application made by Mr McCormack and to grant the Application. The Tribunal accordingly made a Payment Order in favour of the Applicant against the Respondents in the sum of £6,370.00

## **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.



22/04/2022

---

**Legal Member/Chair**

---

**Date**