



**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/21/0875

Re: Property at 54 Batson Street, Glasgow, G42 7HG (“the Property”)

Parties:

Mrs Farzana Tariq, 56 Batson Street, Glasgow, G42 7HG (“the Applicant”)

**Mr Daniel Luke McDonnell, 54 Batson Street, Glasgow, G42 7HG and Ms
Winifred Evelyn Sadiq, Flat 0/1, 85 Govanhill Street, Govanhill, Glasgow, G42
7HJ (“the Respondents”)**

Tribunal Members:

George Clark (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and made an Order for Payment by the First-named Respondent, as Principal, for the sum of £10,080, and the Second-named Respondent, as Guarantor, for £620, in the event that there was a shortfall of at least that amount in any sums recovered from the First-named Applicant . The Applicant’s request for an additional payment of £25 per month in respect of late payment charges was refused.

1. By application, received by the Tribunal on 13 April 2021 and accepted by the Tribunal on 19 May 2021, the Applicant sought an Order in respect of unpaid rent that had become lawfully due by the First-named Respondent to the Applicant and against the Respondent’s mother, the Second-named Respondent, as Guarantor for the First-named Respondent. The sum sought was £6,955 and the Applicant was also seeking an additional payment of £25 per month for each missed rent payment, increasing the sum sought to £7,355.

2. The application was accompanied by a copy of a Tenancy Agreement between the Applicant and the First-named Respondent, commencing on 12 April 2020 at a rent of £530 per month, the tenancy agreement being signed on 12 July 2020. The Applicant also provided a copy of a further Private Residential Tenancy Agreement between the same Parties, also commencing on 12 April 2020, and a copy of a Rent Increase Notice dated 6 September 2020, increasing the rent to £625 per month from 9 December 2020, with a Certificate of Posting dated 7 September 2020. The Second-named Respondent was named as a Guarantor in both Tenancy Agreements, guaranteeing performance of the First-named Respondent's obligations, including the obligation to pay the rent. Her signature was on the first, but not on the second, Tenancy Agreement
3. On 19 May 2021, the Tribunal intimated that it had accepted the application and on 23 July, the Tribunal advised the Parties of the date and time of a Case Management Discussion. The Respondents were invited to make written representations by 13 August 2021. The Applicant made further written representations on 10 and 23 August 2021. She provided an updated Rent Statement showing rent arrears as at 10 August of £9,455, nothing having been paid since the date of the application.
4. The Respondents did not make any written representations to the Tribunal, On 24 August 2021, the day before the Case Management Discussion, Govan Law Centre emailed the Tribunal to say that they had been contacted by the First-named Respondent, but due to time constraints and the fact that they had not seen the case papers, the First-named Respondent would be requesting a postponement to allow them to take proper instructions. They understood that the case would be defended. As the First-named Respondent suffered from serious health problems and would have a disability recognised under the Equalities Act, he should be afforded a further opportunity to obtain legal representation. The Applicant objected to the request for a continuation, contending that it was no more than a delaying tactic, as the Respondents had not made any contact with the Tribunal or made any written representations between April and the day prior to the Case Management Discussion.

First Case Management Discussion

5. A Case Management Discussion was held by means of a telephone conference call on the morning of 25 August 2021. The Applicant was represented by Mr Tariq Nazir. The First-named Respondent was present and was assisted by a support worker. Ms Gemma French. The Second-named Respondent was not present or represented.
6. The Chair of the Tribunal confirmed with the First-named Respondent that he was seeking a postponement of proceedings to allow him to fully brief Govan Law Centre, who would be representing him. The Tribunal then confirmed that it had considered the email from Govan Law Centre, which raised concerns about his mental health, and the objections made on behalf of the Applicant,

and had decided that, in the interests of justice, it would adjourn the Case Management Discussion to a later date, to enable the First-named Respondent to obtain suitable legal advice. The Tribunal would, however, issue a Direction requiring the First-named Respondent to lodge with the Tribunal, not later than 14 days prior to the continued Case Management Discussion, an outline of his defences and copies of any documents on which he proposed to rely. Consideration of the application was continued to a Case Management Discussion to be held by means of a telephone conference call on Tuesday 5 October 2021 at 10am. The Tribunal issued a Direction requiring the First-named Respondent to lodge, not later than close of business on 21 September 2021, outline defences with copies of any documents on which he intended to rely.

7. On 20 September 2021, the Applicant provided an updated Rent Statement showing rent arrears of £10,080.
8. The First-named Respondent did not lodge any outline defences or documents in response to the Tribunal's Direction of 25 August 2021. On 4 October 2021, the day before the continued Case Management Discussion, the Second-named Respondent advised the Tribunal that she had contracted COVID and requested a postponement of the Case Management Discussion scheduled for the following day. The Tribunal agreed to the request for another postponement.

Second Case Management Discussion

9. A second Case Management Discussion was held by means of a telephone conference call on the morning of 17 November 2021. The Applicant was again represented by Mr Tariq Nazir. The Respondent was not present or represented. Mr Nazir told the Tribunal that he had nothing to add to the written representations already made and confirmed that the rent was now a further two months in arrears and asked that the amount sought be increased by £1,250.

Reasons for Decision

10. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Regulations") provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.
11. The Tribunal was satisfied that the amount sought in respect of arrears of rent, namely £10,080, had become lawfully due by the First-named Respondent to the Applicant and that an Order for Payment should be made against him for that amount.
12. The Tribunal then considered the position of the Second-named Respondent. She was named in both Tenancy Agreements as a Guarantor, but, whilst she

had signed the Tenancy Agreement dated 12 July 2020, she had not signed the Tenancy Agreement signed by the Applicant on 19 August 2020 and by the First-named Respondent on 18 August 2020.

13. The Tribunal could not determine why a Private Residential Tenancy Agreement signed in July 2020 was followed by another one, signed a month later, but determined that it had to be assumed that the later Agreement superseded the earlier one. Accordingly, in the absence of her signature, the Second-named Respondent could not be pursued as a Guarantor for any unpaid rent relating to the period after 19 August 2020.
14. The Tribunal decided that, although the earlier Tenancy Agreement had not been signed until three months after its commencement date, the Second-named Respondent assumed liability as Guarantor from the commencement date, namely 12 April 2020. She was, therefore, liable, as a Guarantor, to pay the unpaid rent that had fallen due from 12 April 2020 until 19 August 2020, or such proportion thereof as the Applicant was unable to recover from the First-named Respondent as principal debtor. By reference to the Rent Statements, the Tribunal calculated that the rent due but not paid between those dates amounted to £620, being a shortfall of £30 on each of 10 May, 10 June and 10 July and the full month's rent of £530 due on 10 August.
15. The Tribunal recognised that it was possible that the Applicant held a copy of the later Tenancy Agreement, signed by the Second-named Respondent as Guarantor, but she had not produced it with her written representations. Rule 39 of the 2017 Regulations provides that the Tribunal may either at its own instance or at the request of a party review its Decision where it is necessary in the interests of justice to do so. It is, therefore, open to the Applicant to request a Review if she is able, within the strict timescale set out in Rule 39, to provide evidence that the Second-named Respondent signed, as a Guarantor, the Tenancy Agreement signed by the Applicant on 19 August 2020 and by the First-named Respondent on 18 August 2020. The deadline for making an application for Review is 14 days after the date on which this Decision is sent to the Parties.
16. The Tribunal considered the request by the Applicant for an additional payment of £25 per month for each outstanding monthly rental payment from the date it had become due down to the date of the Tribunal's Order. The Tribunal recognised that reminder letters had been sent and that it had been necessary for the Applicant to make the present application to the Tribunal but did not consider that the case for such additional payments had been made. Accordingly, the Tribunal refused the request for late payment charges.
17. The Tribunal also refused to increase the amount sought to reflect the fact that two further rent payments had fallen due since the date of the Rent Statement provided on 20 September 2021. The request to include a further £1,250 had not been made timeously, although it was open to the Applicant to make a separate application to the Tribunal for an Order for Payment of that further sum.

18. The Decision of the Tribunal was unanimous.

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.

G. C

Legal Member/Chair

17 November 2021
Date