



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/23/4004

Re: Property at 41 4/2 Reform Street, Dundee, DD1 1SH (“the Property”)

Parties:

Mr John Baruffati, Pitkerro House, Baldovie, Broughty Ferry, Dundee, DD5 3NX (“the Applicant”)

Miss Aimee Cant, whose present whereabouts are unknown, Ms Niamh Fenton, 44 Thomson Crescent, Falkirk FK1 5PZ and Mx Maxwell Birks, 96B Kemnay Gardens, Dundee, DD4 7TP (“the Respondents”)

Tribunal Members:

George Clark (Legal Member)

Decision (in absence of the First-named Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing, made an Order for Payment by the First-named Respondent to the Applicant of the sum of £1,685, and dismissed the application against the Second-named Respondent and the Third-named Respondent.

Background

1. By application, dated 10 November 2023, the Applicant sought an Order for Payment in respect of unpaid rent that had become lawfully due by the Respondents to the Applicant. The sum sought was £2,360.
2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Applicant and the Respondents commencing on 1 August 2022 at a rent of £960 per month and separate rental statements in respect of the First and Third-named Respondents. These indicated that the First-named Respondent was in arrears to the extent of £1,685 and the Third-named Respondent had arrears of £675. The application stated that these were the sums owed by the First and Third-named Respondents. The First-named Respondent had requested to leave the tenancy agreement but had made no

attempt to find a replacement tenant and the remaining tenants (the Second and Third-named Respondents) had made it difficult to find a replacement tenant and did not wish to cover the First-named Respondent's share of rent.

3. The Tenancy Agreement stated that the Respondents were jointly and severally liable for all of the obligations of the tenants, and the Applicant was seeking an Order for Payment for the full amount of £2,360.
4. On 25 January 2024, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondents were invited to make written representations by 15 February 2024. As the present whereabouts of the Respondents were unknown, the notice of proceedings was sent to the email addresses of the Respondents, provided by the Applicant, and service was effected by Advertisement on the Tribunal's website between 25 January 2024 and 13 March 2024.
5. On 12 February 2024, the Second-named Respondent submitted written representations to the Tribunal. She stated that she moved into the Property on 28 June 2021. It had 3 bedrooms and, when the tenants of the other rooms moved out, the First and Third-named Respondents moved in from April 2022. On 23 November 2022, she emailed the letting agents to say that the First-named Respondent was intending to move out. She said that she and the Third-named Respondent could not afford to pay the First-named Respondent's rent as well as their own. They did not know anyone in Dundee and were worried about having a stranger in the Property. On the same day, the letting agents responded to say that the First-named Respondent could not legally leave the Property until everyone was in agreement about the situation going forward. If they did not come to an agreement to pay the First-named Respondent's rent and did not find anyone to replace her, she was "still legally liable for her full rent and you will not bear any extra financial burden due to this." On 13 January 2024, the letting agents emailed the Second-named Respondent "regarding Aimee's rent arrears at the property". They confirmed the First-named Respondent was still tied into the tenancy agreement. In an email later that day, the letting agents told the Second-named Respondent that all three Respondents were jointly and severally liable for the rent. They suggested that if the remaining tenants put an advertisement on a relevant website, they would probably find someone fairly quickly. They added that "it is not individual leases within one property" but repeated that they were not chasing the Second-named Respondent for the arrears but were legally required to write to all the tenants. On vacating the Property in June 2023 and throughout her tenancy, her rent had been paid up to date and she had no knowledge of the amount of rent owed by the First and Third-named Respondents. She had not received any emails, telephone calls or other correspondence from the letting agents.
6. The Second-named Respondent provided the Tribunal with copies of the emails referred to in her written representations.
7. On 15 February 2024, the Third-named Respondent made written representations to the Tribunal. They stated that, on 5 February, they had

offered £325 as a lump sum towards their arrears of £675, with monthly payments thereafter of £50 and that this arrangement had been accepted by the letting agents on 9 February.

First Case Management Discussion

1. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 13 March 2024. The Applicant was represented by Mr Sam May of Easylets Limited, Dundee. The First-named Respondent was not present or represented. The Second-named Respondent was present and was assisted by her mother, Mrs Laura Fenton. The Third-named Respondent was also present. By this date, the Tribunal had up to date addresses provided by the Second and Third-named Respondents.
2. The Applicant's representative told the Tribunal that it was accepted that the Second-named Respondent had paid her chosen share of the rent in full and that the Applicant had agreed to the payment plan offered by the Third-named Respondent, who had paid the initial sum of £325 and a further £50 toward the arrears. He maintained that the liability of the Respondents was joint and several and that the separated rent ledger statements were the result of his office accounting system not being able to amalgamate into one account payments made by different tenants. He appreciated the position of the Second-named Respondent and wanted a fair outcome, but maintained that, as the Second and Third-named Respondents had failed to find a replacement tenant, all 3 Respondents had allowed the arrears to accumulate. The Second and Third-named Respondents could have limited the arrears by finding an alternative property and giving 28 days' notice. Had they asked them to do so, the letting agents would have tried to find an alternative tenant.
3. The Respondents present told the Tribunal that it would have been very difficult to find another student to replace the First-named Respondent in November. The University term was well under way and students had already found their accommodation. Equally. It would have been difficult for them to find alternative accommodation until the end of the academic year.
4. The Tribunal noted that the Tenancy Agreement states that the Respondents are all bound jointly and severally. Normally, that would have been the end of the matter, but it was clear from the evidence provided that, firstly, the letting agents were running separate ledger accounts for the rents due and paid by each Respondent and, secondly, that, they were regarding the arrears of the Third-named Respondent as being £675. This was stated in the application and the position was reinforced by the fact that they had agreed a payment plan. They had also told the Second-named Respondent in an email of 23 November 2022 that the First-named Respondent "is still legally liable for her full rent and you will not bear any extra financial burden due to this." The application also stated that the First-named Respondent "is due £1,685" and the Third-named Respondent "is due £675." Accordingly, the Tribunal's view was that, despite the wording of the Tenancy Agreement, the Applicant's agents were clearly treating the Respondents individually and differently.

5. The Tribunal was satisfied that the liability of the First-named Respondent to pay rent remained, despite her having left in November 2022 and that, accordingly, an Order for Payment should be made against her. She appeared to have taken no steps to try and find a replacement tenant. The Tribunal also accepted that the personal circumstances of the remaining Respondents, disclosed to the Applicant, would have entitled them to have concerns about a new tenant moving in, whom they did not know. The Tribunal was also satisfied from the terms of the application and the evidence led that the Second-named Respondent's rent account was clear when the tenancy ended and that she should not be liable for any part of the sum sought. In relation to the Third-named Respondent, the Applicant had accepted a payment plan and their arrears had reduced from £675 to £300. The view of the Tribunal was that it would not be proportionate to make an Order for Payment at that stage against the Third-named Respondent and that consideration of the application against them should be continued to a further Case Management Discussion. If the monthly payments continued to be made, the Tribunal might not regard it as necessary to make an Order at that later stage but would make an Order for Payment if the Third-named Respondent failed to adhere to the payment plan.

Second Case Management Discussion

6. A second Case Management Discussion was held by means of a telephone conference call on the morning of 17 July 2024. As the whereabouts of the First-named Respondent are still unknown, service on her was by Advertisement on the Tribunal website from 10 June to 17 July 2024. None of the Respondents was present or represented at the second Case Management Discussion. The Applicant was again represented by Mr Sam May of Easylets Limited, Dundee.
7. Mr May told the Tribunal that the Third-named Respondent had continued to reduce their liability by instalment payments and the amount outstanding was now £100. As they were paying consistently, he was content that the application against them should be dismissed.

Reasons for Decision

8. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 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 sufficient information and documentation it required to enable it to decide the application without a Hearing.
9. For the reasons set out in Paragraphs 4 and 5 of this Decision, the Tribunal was satisfied that the First-named Respondent was due to pay the sum of £1,685. The Tribunal noted that the Second-named Respondent's payments had been made in full and that the Applicant was content that the payment plan in respect of the Third-named Respondent was being adhered to. Accordingly, the Tribunal determined that the application should be granted *quoad* the First-named Respondent should be dismissed *quoad* the Second and Third-named Respondents.

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.

George Clark

Legal Member/Chair

17 July 2024

Date