



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/24/1358

Re: Property at 11 Beansburn, 1/L, Kilmarnock, KA3 1RN (“the Property”)

Parties:

Mr Graeme Crombie Miller, 34 Alexandria Street, Kirkintilloch, G66 1HE (“the Applicant”)

Mr Conner James McClung, Mr John Lennon McClung, 23 Glencaigs Drive, Kilmarnock, K13 2DE; 21 Crofthead Avenue, Kilmarnock, KA2 2HA (“the Respondent”)

Tribunal Members:

Mary-Claire Kelly (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for payment in the sum of THREE THOUSAND SEVEN HUNDRED AND FIFTY POUNDS (£3750)

Background

1. The applicant lodged an application dated 20 March 2024 seeking an order for payment of £3750 in respect of unpaid rent. The application names the tenant Conner McClung and his guarantor John McClung as respondents.
2. The applicant lodged the following documents with the application
 - Copy tenancy agreement
 - Copy correspondence from the applicant to John Lennon McClung
 - Rent statement

- Statement of Kirsty Lockhart owner of West End Letting and Sales dated 15 August 2024
3. John McClung emailed the Tribunal on 30 June 2024. He stated that he was not Conor McClung's guarantor in respect of the lease. He stated that he initially agreed to be guarantor but changed his mind and subsequently decided not to act as guarantor. John McClung provided photographic copies of his driving licence and passport. He stated that he had not signed the tenancy agreement as could be seen from the difference between the signature on the tenancy agreement which had been produced and that on the passport and driving licence. John McClung disputed that he had signed the tenancy agreement. He requested that his name be removed from the application and asked to be excluded from the Tribunal process going forward.
 4. Due to data protection issues the Tribunal requested that John McClung resubmit copies of the documents with certain personal information redacted prior to the documents being shared with the other parties. The signature on the photographic documents appeared to be different from the signature on the lease which was a printed signature.
 5. A case management discussion was held by teleconference on 22 July 2024. The applicant was represented by Mr Haswell solicitor. Neither respondent was present or represented. The Tribunal adjourned the cmd to a further cmd as the Tribunal's response to the written representations received by John McClung did not appear to have been sent in advance of the cmd. The Tribunal was satisfied that both respondents had been notified of the cmd but given the representations lodged by John McClung determined to adjourn to allow him to lodge redacted documents. This would also allow the applicant's representative to take instructions on John McClung's representations.

Case management discussion – teleconference – 24 September 2024.

6. The applicant was present with his representative Mr Haswell solicitor. Neither respondent was present or represented. The Tribunal was satisfied that both respondents had received proper notice of the cmd and proceeded with the discussion in their absence in terms of rule 29.
7. Prior to the cmd a statement was submitted by the applicant from Kirsty Lockhart, the owner of West End Letting and Sales. The statement was dated

15 August 2024. The statement was detailed and responded to the position as stated by John McClung that he had not signed the lease agreement.

8. Ms Lockhart narrated the background to the tenancy being entered into and included the following information:

Mr. Conner James McClung paid the deposit, and he completed our online Tenant Application Form. He gave us a name, telephone number and email address for his guarantor, his father, Mr. John McClung. Mr. John McClung completed our online Guarantor Application Form. The application requires submission of a proof of ID and proof of address – hence we received both the tenant's and guarantor's driving license and letter addresses to them. Per our policy, we called both the tenant and guarantor to confirm that they completed and signed the application forms – we were satisfied that they did, having received confirmation from both gentlemen on phone calls. The tenancy agreement is an electronic signature document via Signable, an approved software provider. Before sending the signature document, both Mr. Conner James McClung and Mr. John McClung were emailed by my colleague at the time, Mr. Ryan Hynes and advised that the document would be sent via Signable, and that 'Every document processed via Signable is legally binding and would be admissible in a court of law.' I have attached a screenshot of the full email below.

Signing electronically can eliminate many of the impractical logistics of signing in wet ink and allows all parties to sign a document within seconds of being invited to do so and as per Scottish Government, is permitted 'You and your landlord can agree to sign a digital copy of your private residential tenancy agreement and send it by email rather than printing it out and posting it.'

The tenancy was sent to Mr. John McClung (johnmcclung@gmail.com) to sign as the guarantor initially on Tuesday 16th March 2021 at 14.25pm, it was received and opened by Mr. John McClung on Tuesday 16th March 2021 at 18.34pm and was signed at 18.36pm. The document was then sent via Signable to Mr. Conner James McClung (cmclung1989@me.com) on the same day at 18.36pm, received and viewed at 18.42pm and signed at 18.43pm. The document was sent back to my colleague at our office and was received at 16th March 2021 at 18.43pm. The document was signed by my colleague the

following working day, on Wednesday 17th March 2021 at 10.19am. On Wednesday 17th March 2021 at 10.19pm, the signed completed document was emailed to all parties, Mr. Conner James McClung (cmcclung1989@me.com), Mr. John McClung (johnmcclung@gmail.com) and our office (ryan@westendletting.com)...

I am satisfied that both Mr. Conner James McClung and Mr. John McClung, after having been given the opportunity to seek their own legal advice before doing so, signed the tenancy agreement via Signable. They had completed the tenancy and guarantor agreements, provided their documentation as ID and address checks and were advised of the legality of signing the tenancy agreement digitally, through Signable. There is no doubt in my mind that Mr. John McClung acted and was aware of acting as guarantor for the tenant Mr. Conner James McClung prior to and during the tenancy at 11 Beansburn Kilmarnock from March 2021.

9. Prior to the cmd John McClung had sent a further email to the Tribunal on 28 August 2024. The email stated:

Can you also add the following for consideration at the tribunal? I do not dispute that I initially engaged with parties re being guarantor. I got red flags while asking Conor questions about the tenancy. I told Conor I would not be guarantor and he would need to find someone else. I do not dispute correspondence was sent to my email address and the date and times are accurate, however I dispute it was myself that opened and Esigned the agreement, the dates and time for both signed documents are minutes apart which indicates they were signed about the same time, by the same person. The attached letter indicates I sent a copy of my driving licence to them, compare my signature on my driving license to the Esignature. Compare the redacted copies of my driving license and passport signature with the Esignature. I have provided ample proof I did not sign this agreement, I have no involvement with this tribunal. Future correspondence will be noted but not responded to.

10. It was clear from the response submitted by John McClung that he continued to dispute the fact that he signed the tenancy agreement. In terms of his most recent email he accepted that the information provided by Ms Lockhart relating to the email correspondence with him was accurate but he disputed that it was

- he who opened the emails and electronically signed the lease. He provides no information as to who did open the emails and sign the documents on his behalf.
11. The Tribunal considered whether it was appropriate to fix a hearing given that the facts of the case were disputed.
 12. The Tribunal noted that whilst John McClung had submitted emails disputing the application in advance of both cmds he had chosen not to attend the cmds. Mr McClung had also stated that he did not want to be included in the Tribunal process and would have no further involvement with the Tribunal.
 13. Mr Haswell sought an order for payment.
 14. The Tribunal took into account Mr McClung's statements that he did not wish to engage further with the Tribunal process and the impact on the applicant of an adjournment given that neither respondent had attended either cmd. The Tribunal did not consider it appropriate in the circumstances to fix a hearing. In particular whilst John McClung stated in his emails that he disputed that he was a guarantor he had not engaged with the cmds or asked for an opportunity to put further evidence before the Tribunal to corroborate his position. On the contrary, in both emails he had expressed that he did not wish to engage in the Tribunal process and most recently would not respond to correspondence. John McClung did not request or seek a hearing in respect of the application. The Tribunal accepted John McClung's position that he would not engage further and therefore no discernible purpose would be served in fixing a hearing which would delay matters further. The Tribunal considered that it had sufficient information before it to determine the application at the cmd.

Findings in fact

15. McGregor McLeod solicitors and Conor McClung entered in a tenancy agreement with a commencement date of 19 March 2021.
16. The applicant is the sole principal of McGregor McLeod solicitors.
17. John McClung acted as Conor McClung's guarantor under the said lease.
18. Conor McClung and John McClung signed the lease using electronic signatures via Signable on 16 August 2021.
19. In terms of clause 49 of the lease the guarantor, John McClung guarantees all payment of rent under the agreement and liability continues after termination of the agreement.

20. Monthly rent due in terms of the agreement was £375.
21. The tenancy agreement ended on 30 August 2022.
22. No rent had been paid in the property from November 2021 to August 2022 resulting in arrears in the sum of £3750.

Reasons for decision

23. The Tribunal had regard to the application and the documents lodged by the applicant. The Tribunal also took into account Mr Haswell's submissions at the cmd. The Tribunal also had regard to the email correspondence received from John McClung.
24. The Tribunal accepted the contents of the statement from Ms Lockhart which provided a reasonable explanation for the electronic signature of Mr McClung on the lease. The Tribunal preferred the explanation in the letter from Ms Lockhart to John McClung's position as set out in his email dated 28 August 2024 which was that the emails had been sent to him but that someone else had opened and signed them. This explanation seemed unlikely. Mr McClung had provided no explanation of who had opened his emails and returned them to the letting agents.
25. The Tribunal considered that the letting agents had not reason to be dishonest in relation to this matter. However, Mr McClung would be liable for a payment of the outstanding sum which would provide an explanation for his seeking to show that he was not guarantor.
26. The Tribunal accepted the level of rent arrears as shown in the rent accounts which were lodged – the amount was not in any event disputed.
27. The Tribunal took into account that the first respondent, Conor McClung had not taken any steps to defend the application and had not corroborated John McClung's position.
28. In the foregoing circumstances the Tribunal determined that John McClung had digitally signed the application as a guarantor and that both respondents were liable for the outstanding amount of £3750.

Decision

The Tribunal determined to grant an order for payment in the sum of £3750.

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.

24/9/24

Legal Member/Chair

Date