



**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/23/2637**

**Re: Property at 133 Strawberry Bank Parade, Aberdeen, AB11 6UW (“the Property”)**

**Parties:**

**Mrs Carol Ann Moreton, 2 Aitken Den, Letham Grange, Arbroath, DD11 4QS (“the Applicant”)**

**Myrtle Baird, 132 Osborne Place, Aberdeen AB24 2DU, and Mrs Lauren Baird or Duthie, 55 Rubislaw Den South, Aberdeen AB15 4BA (“the Respondents”)**

**Tribunal Members:**

**George Clark (Legal Member) and Mary Lyden (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 granted in respect of the First-named Respondent and refused in respect of the Second-named Respondent. The Tribunal made an Order for Payment by the First-named Respondent to the Applicant of the sum of £5316.19.**

**Background**

1. By application, dated 4 August 2023, the Applicant sought an Order for Payment in respect of unpaid rent due by and damage to the Property caused by the First-named Respondent. The Second-named Respondent was included in the application as a Guarantor for the First-named Respondent.
2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Applicant and the First-named Respondent, commencing on 6 July 2020 at a rent of £475 per month, with a deposit of £475. The Tenancy agreement does not contain any provisions relating to a Guarantor, and it is not signed by the Second-named Respondent, but the Applicant provided a copy of a “Tenancy Application Form” in which the Second-named Respondent is named as a Guarantor and which the Second-named Respondent signed, and an email from her to the letting agents, dated

20 December 2021 in which she said “As you are fully aware, I ceased to be guarantor for Lauren, last September. I informed you of this by email and by letter. Also, you led me to believe Lauren was being evicted last October... You cannot expect me, after the many times I have told you that I cannot be guarantor of Lauren’s rent, to pay this bill... You could, and should have evicted Lauren, when I informed you that I was no longer willing to pay her rent.” The Applicant contended that the Second-named Respondent’s signature on the Tenancy Application Form, combined with her subsequent request to withdraw from the obligation showed clear intent on the Guarantor relationship being in place. Although she did not sign the Tenancy Agreement in that capacity, there was a contractual obligation for the Guarantor to guarantee the rent. The letting agents had confirmed that this was their standard practice when there was a Guarantor. The Applicant supplied a copy of an email of 3 December 2021 from the letting agents and the Second-named Respondent in which they said “Unfortunately as you signed the guarantor paperwork... you are now liable for the outstanding rent.” On 9 December 2021, the Second-named Respondent replied “I have made it clear to you, on several occasions, that I am no longer the guarantor of Lauren’s rent. I emailed this information to you on the 7<sup>th</sup> September 2020.”

3. The Applicant also provided a Rent Statement showing arrears as at 6 May 2022 of £3,650.88 and a list of repairs, with photographs showing the condition of the Property before they were carried out and vouching for the repair costs. These amounted to £2,340.31. The total sum claimed was £5,516.19, the rent arrears being stated to be £3,175.88, after the deposit of £475 was deducted..
4. On 1 November 2023, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondents were invited to make written representations to the Tribunal by 22 November 2023. Neither Respondent made any written representations.

### **First Case Management Discussion**

5. The Case Management Discussion was scheduled to take place by way of a telephone conference call on the morning of Monday 11 December 2023. On Friday 8 December, however, the Tribunal Clerk noticed that the dial-in passcode provided to the Parties was incorrect. The Tribunal was able to email the Applicant’s solicitors and the Second-named Respondent with corrected information but did not have any contact details other than a postal address for the First-named Respondent, so the information had to be sent to her by post.
6. The Applicant’s solicitor, Mr Ritchie McNeil of DJP Solicitors, Aberdeen joined the conference call on 11 December, but neither Respondent was present or represented. As the Tribunal could not know whether the First-named Respondent had received the corrected information, it had no alternative but to continue the case to a later date. The Tribunal decided, however, to issue Directions to the Parties regarding the Second-named

Respondent's emails of 7 September 2020 and later, and any responses sent to her by the letting agents.

7. The Tribunal Directed the parties on 11 December 2023, as follows:  
*"The Applicant and Second-named Respondent are required to provide copies of all emails and letters that passed between the Applicant's letting agents and the Second-named Respondent from 7 September 2020 onwards relating to the Second-named Respondent's claim that she is not a Guarantor for the First-named Respondent.*  
*"The said documentation should be lodged with the Chamber no later than close of business on 12 January 2024."*
8. Neither Party provided any further documentation to the Tribunal.

### **Second Case Management Discussion**

9. A second Case Management Discussion was held by means of a telephone conference call on the morning of 5 February 2024. The Applicant was again represented by Mr McNeil. Neither Respondent was present or represented.
10. The Tribunal expressed concern that neither Party had responded to the Tribunal's Direction of 11 December 2023 and that, as a result, the Tribunal did not as yet have sufficient information to enable it to decide the application. In particular, the Tribunal was not yet satisfied that the document signed by the Second-named Respondent amounted to a contract between her and the Applicant. It was headed "Tenant Application Form" and the First-named Respondent had completed the section asking for her details. The property address, rental amount and proposed tenancy start date were completed, but the section set out for the landlord/agent's particulars was not, and the document was not signed on or on behalf of the Applicant. The final part was headed "Guarantor's Details (if applicable)", and it had been completed with information regarding the Second-named Respondent. Beneath this was the word "Signature:" and the Second-named Respondent had signed it there, but there was no space provided on the Form for any other signature and the Tribunal was of the preliminary view that the intention was that the prospective tenant, rather than the Guarantor, was expected to sign it. It did not seem logical that the person applying for the tenancy should not be required to sign the application form but that a prospective Guarantor did have to sign it.
11. If the Tribunal's view was correct, the Second-named Respondent signed the Tenant Application Form in error, so it could not be founded on as constituting a contract and an enforceable Guarantee. There was no mention of a Guarantor in the Tenancy Agreement, so the Second-named Respondent might not have been made aware of the potential extent of her liability, should the First-named Respondent default on rent or fail fulfil any other obligation incumbent on her in terms of the Tenancy Agreement.
12. The preliminary view of the Tribunal was that the Tenant Application Form was an application by the First-named Respondent, offering the Second-

named Respondent as Guarantor. Mr McNeil told the Tribunal that it was his understanding that this was the letting agents' normal procedure when a Guarantor was involved and that his position was that it would be intended that the Second-named Respondent sign beneath the Guarantor details on the form. He also referred to the fact that the Second-named Respondent had thereafter sought to withdraw as Guarantor, which implied that she accepted that she was hitherto bound.

13. The papers included an email from the Second-named Respondent to the letting agents of 9 December 2020, in which she said "I have made it clear to you, on several occasions, that I am no longer the guarantor of Lauren's rent. I emailed this information to you on the 7<sup>th</sup> September 2020." It was this email that had caused the Tribunal to issue its Direction of 11 December 2023, requiring the Parties to provide copies of the email of 7 September 2020 and subsequent correspondence, as they might be crucial to the Tribunal's ultimate determination of the application.
14. Having considered all the information available to it, the Tribunal decided that it was unable at present to hold that the Second-named Respondent had contractually agreed to become a Guarantor, so was unable to fully determine the application. Accordingly, the case would proceed to a full evidential Hearing on the matter of the interpretation of the Tenant Application Form and the correspondence which followed. The Applicant would be expected to provide written or oral evidence from the letting agents explaining why they did not include the Second-named Respondent as a Guarantor in the Tenancy Agreement itself and whether, and if so, why they expected a potential Guarantor, but not the prospective tenant, to sign a Tenant Application Form.

## **Hearing**

15. A Hearing was held by means of a telephone conference call on the morning of 17 September 2024. The Applicant was again represented by Mr McNeil. The Respondents were not present or represented. The First-named Respondent had been traced by sheriff officers to a new address in Aberdeen and service of the notification of the Hearing was effected on her there on 26 August 2024.
16. Mr McNeil called as a witness Ms Caroline Walker, Director of Caroline Walker Property Leasing, Aberdeen, the Applicant's letting agents. She told the Tribunal that she knew of the Second-named Respondent when she contacted the letting agency to enquire about a property for her daughter, the First-named Respondent, who was, she understood, returning to Aberdeen from down south. The Property seemed suitable and Ms Walker showed it to the Second-named Respondent, who then completed and signed the Tenant Application Form. Ms Walker had ascertained from the Second-named Respondent that her daughter was not in employment and had not rented before. Ms Walker told her that in such circumstances a Guarantor would be required, and the Second-named Respondent completed and signed the portion of the form relating to Guarantors. The First-named Respondent did

not sign the Tenant Application Form and the Second-named Respondent did not sign the subsequent Tenancy Agreement. Ms Walker told the Tribunal that this was her firm's normal practice at the time, although it has since changed with the introduction of a case management system.

17. The Second-named Respondent initially paid the rent on behalf of her daughter but stopped doing so after a few months. She told Ms Walker that her daughter's husband had returned to Aberdeen to live with her at the Property and the Second-named Respondent wanted nothing further to do with the tenancy. Ms Walker stated that she was in no doubt that the Second-named Respondent was well aware of her Guarantor obligations when she signed the Form. Had she not agreed to be Guarantor, the Property would not have been let to the First-named Respondent.
18. The Tribunal was provided with a copy of the Inventory Schedule of Condition relative to the tenancy, dated 3 July 2020. This showed the condition of the Property immediately prior to the commencement of the tenancy. Photographs also provided to the Tribunal showed the condition of the Property when the tenancy ended in June 2022. There were significant holes in internal walls and visible damage to the hob.
19. Ms Walker told the Tribunal that drugs paraphernalia had been found in the Property. This, plus the damage, which was clear from the photographs, had resulted in the claim for damage, including replacement carpets and mattress and a new hob, and complete redecoration following on plasterboard repairs to damaged walls. She accepted that the First-named Respondent had handwritten on the Tenancy Agreement a note to the effect that most of the drawers in the chest of drawers were coming apart and that it had not been repaired or replaced.
20. Mr McNeil told the Tribunal that his client's position was that the Second-named Respondent accepted that she was a Guarantor, as, in an email of 15 March 2024 to the Tribunal she mentioned that she did agree to pay a few months' rent. She was well aware of her obligations, as she tried to withdraw from being a Guarantor.

### **Reasons for Decision**

21. The Tribunal considered carefully the terms of the Tenancy Application Form. It comprises a number of sections. The first section contains the "Applicant Personal Details"; the second section provides details of "The Let Property Applied For"; the next five sections seek details of the Applicant's current landlord/agent, current and previous addresses (up to 6 years), current employer, previous employer (if the current employment is less than 6 months), and Reference Details (employer and/or previous landlord/agent). The next section is headed "Guarantor's Details (if applicable)" and, immediately beneath that is the word "Signature". The form does not have attached to it a copy of a proposed tenancy agreement and the only information that it would provide to a prospective guarantor would be the

address of the property, the rent and the proposed tenancy start date. The Second-named Respondent had signed at the "Signature" part.

22. The view of the Tribunal was that this was a form which was intended for completion by a prospective tenant, not by a prospective guarantor. It was illogical to suggest that it should be signed by a guarantor but not by the prospective tenant. In the present case, the form was signed by the Second-named Respondent, as the First-named Respondent was not present. In her email to the Tribunal of 15 March 2024, the Second-named Respondent had stated that she had looked for a flat for her daughter, who wished to return to Aberdeen. The view of the Tribunal was, therefore, on the balance of probabilities, that the Second-named Respondent signed the Form on behalf of her daughter. In any event, the Form did not create any form of contract. It was merely an application form. It was not signed by or on behalf of the Applicant as the prospective landlord.
23. The tenancy agreement which followed adopted the Scottish Government Model Tenancy Agreement. It is designed to be completed in digital form with the option to amend its "standard" clauses or to add additional ones. Clause 38 is headed "The Guarantor". It sets out clearly the obligations a guarantor will be taking on, with space for the guarantor's details to be inserted and for the guarantor to sign. The clause would appear for completion in a Private Residential Tenancy Agreement unless it was deleted. It does not appear in the Tenancy Agreement in the present case and the Agreement is signed only by the First-named Respondent. The Tribunal's view is, therefore, that the Second-named Respondent did not enter into a contract whereby she became a Guarantor for the fulfilment by the First-named Respondent of the tenant's obligations under the Tenancy Agreement. The only form she signed was an application form. This may have been the practice of the Applicant's agents at the time, but if it was, it was fundamentally flawed.
24. The Tribunal accepted that the Second-named Respondent intended to and did pay the deposit and the first rental payments, and that she stated in emails to the Applicant's letting agents that she was no longer prepared to be a guarantor for her daughter, but the Tribunal's view was that this did not cure the absence of a written contract. To hold the contrary would mean that the Second-named Respondent acted on the faith of, and became a Guarantor for obligations under, a contract that she had never seen, let alone signed.
25. The decision of the Tribunal was, therefore, that the application *quoad* the Second-named Respondent must fail.
26. The First-named Respondent made no written representations to the Tribunal and was not present or represented at either Case Management Discussion or at the Hearing. The Tribunal was satisfied from the evidence before it that the rent arrears sought had become lawfully due by her to the Applicant. The Tribunal was also satisfied, from the photographic and other evidence provided, that the Applicant was entitled to an Order for Payment on the

basis of invoices provided, but under deduction of the sum of £200 claimed for the chest of drawers and cabinets in the bedroom, as the First-named Respondent had highlighted at the outset of the tenancy issues about the condition of the chest of drawers. The Tribunal's Order for Payment would, therefore, be in the sum of £5,316.19, of which £3,175.88 represented rent arrears.

27. The Tribunal's decision 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.**

# George Clark

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**Legal Member/Chair**

**17 September 2024**  
**Date**