



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Rule 17 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) in respect of an application under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 111 of the Rules.

Chamber Ref: FTS/HPC/CV/23/4468

Re: Property at 7 Gimmerscroft Crescent, Airdrie, ML6 8PB (“the Property”)

Parties:

Mr John Weldon residing at 5 Craignure Crescent, Airdrie, ML6 8EL (“the Applicant”)

Miss Lucy Rhodes residing formerly at the Property and now residing in temporary accommodation and Mr Matthew Rhodes and Mrs Shona Rhodes both residing at 5, Craighdu Avenue, Airdrie, ML6 8EN (“the Respondents”)

Tribunal Members:

Karen Moore (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Order for payment of EIGHT THOUSAND THREE HUNDRED AND FIFTY POUNDS AND THIRTY TWO PENCE (£8,350.32) Sterling against the first-named Respondent, Miss Lucy Rhodes.

The Tribunal dismissed the Application against the second-named and third-named Respondents, Mr Matthew Rhodes and Mrs Shona Rhodes.

Background

1. By application received between 6 December 2023 and 19 December 2023 (“the Application”), the Applicant applied to the Tribunal for an Order for payment of rent due and owing arising from a private rented tenancy between the Applicant and the first-named Respondent and in respect of which the second-named and third-named Respondent were said to be acting as guarantors. The Application also sought an order for payment of costs to restore the garden areas to the condition at the start of the tenancy and for damage to the front door.

2. The Application comprised a copy of a tenancy agreement between the Applicant, Mr. Weldon, and the first-named Respondent, Miss Rhodes, rent increase notices, a rent statement showing £3,300.00 due and owing to 16 November 2023, an estimate for the garden restoration work in the sum of £5,475.60, a claim for £50.00 for damage to the front door and copy correspondence between the Parties.
3. A Case Management Discussion (“CMD”) was fixed for 26 April 2024. Prior to the CMD, the Applicant amended the sum sought in respect of rent to £6,050.00. Also prior to the CMD, the Applicant and the second-named Respondent submitted written representations.
4. The CMD took place on 26 April 2024 at 14.00 by telephone. The Applicant, Mr. Weldon, took part, was not represented and was supported by his wife, Mrs. Weldon. The first-named Respondent, Miss Rhodes, took part and was not represented. The second-named Respondent, Mr Matthew Rhodes, did not take part and was represented by Mrs. Deanne McCreadie. The third-named Respondent, Mrs Shona Rhodes, did not take part and was not represented. The Tribunal had certification that the Application was served on Mrs. Rhodes by Sheriff Officers and so the Tribunal proceeded in her absence.
5. At the CMD, the first-named Respondent, Miss Rhodes, accepted that she owes the rent stated as due but disputed that there had been damage to the Property and disputed that work had been carried out. The Applicant, Mr. Weldon, clarified that the work is still to be carried out and that the estimate lodged with the Application is an indication of the cost. He explained that the work will be carried out when he has vacant possession.
6. On behalf of the second-named Respondent, Mr Matthew Rhodes, Mrs. McCreadie stated that he disputed that he acts as guarantor and so denies any liability for the sums claimed as due. She stated that Mr. Rhodes had not signed any legally binding documents to the effect that he is a guarantor.
7. The Tribunal advised that as there are two clear disputes, being the damage to the Property and the issue of guarantor on the part of Mr. Rhodes, a Hearing of evidence will be required. Therefore, the Tribunal adjourned the CMD to a Hearing, set out the matters to be proved and issued a Direction in respect of evidence required.

Hearing

8. A Hearing of evidence was fixed for 13 September 2024 and postponed to 22 January 2025. Prior to both Hearing dates, Mr. Weldon, the Applicant, submitted inventoried written submissions and productions and amended the sum sought to rent of £7,950.00 and sheriff officer costs of £402.32. Also prior

to the Hearing, the second-named and third-named Respondents, Mr. and Mrs. Rhodes, submitted written statements by email.

9. The Hearing took place on 22 January 2025 at 10.00 in the Glasgow Tribunal Centre. Mr. Weldon, the Applicant, was present and unrepresented. All three Respondents were present and unrepresented.

Preliminary Matter

10. The Tribunal dealt with the preliminary matter of the disputed guarantees first. Mr. Weldon accepted that there were no written contracts of guarantee between him and either of Mr. and Mrs. Rhodes. He stated that he relied on conversations between himself and Mr. and Mrs. Rhodes, conversations between Mrs. Rhodes and his wife and text messages.
11. The Tribunal explained, in broad terms, that, although the best type of contract is in writing, it is possible to have an unwritten contract provided it can be shown that the parties to the unwritten contract are in agreement in respect of what was intended. The Tribunal explained that, for an unwritten contract to be enforceable, *consensus in idem*, that is, the consent of the parties to all parts of the contract must be proved. The Tribunal explained that this can be proved by actions or words.
12. With regard to a guarantee, the Tribunal explained that this is a special type of contract as it is a personal contract whereby a person, the guarantor, promises to fulfil contractual obligations of a contract if the person bound by that contract fails to do so. Therefore, there is a higher bar in proving an unwritten contract of guarantee than proving a simple contract.
13. Mr. Weldon stated that the evidence that he had submitted proved that contracts of guarantee had been put in place. Mr. and Mrs. Rhodes denied that there were any such contracts.
14. The Tribunal then heard evidence in respect of the contracts of guarantee.

Evidence heard in respect of the preliminary matter

15. Mr. Weldon, with reference from time to time, to the productions which he had lodged, stated that he, his wife and Mr. and Mrs. Rhodes had been friends and neighbours. He and his wife have rental properties. Mr. Weldon explained that he works abroad and his wife deals with the property management. He stated that they also used a letting agent, Joanna Daly, who sold her business to Your Move who now act as the letting agents.

16. Mr. Weldon stated that in or around May 2019, Mrs. Rhodes had approached his wife to enquire about a lease of one of their properties in Craignure. The tenant of the property was to be her daughter, Miss Rhodes, and her daughter's partner, Marc Faulds. Mr. Weldon accepted that he had not been present at the meeting but understood that his wife had advised Mrs. Rhodes that the Craignure property had been let, however, another property, being the Property in Gimmerscroft, would be available shortly. He understood that his wife had advised Mrs. Rhodes to contact the letting agent, Joanna Daly, which Mrs. Rhodes did. Mrs. Rhodes then spoke again to Mrs. Weldon and explained that, as Marc Faulds had gambling debts, he would not pass a credit check. Mr. Weldon stated that his understanding was that Mrs. Rhodes offered to guarantee payment of the rent. The tenancy was then entered into. There was no provision for a guarantee in that tenancy agreement
17. In answer to questions from the Tribunal, Mr. Weldon explained that Mr. Faulds left the Property and the tenancy "continued" with Miss Rhodes under a new tenancy agreement prepared by Your Move. He accepted that there is no provision for a guarantee in that tenancy agreement. The new tenancy commenced on 12 October 2021 in Miss Rhodes' name alone, with Mr. Weldon as landlord.
18. Mr. Weldon stated that Miss Rhodes had never paid rent and that it was always Mrs. Rhodes who made the payment, firstly to Joanna Daly and then to Your Move. He stated that rent was more or less paid on time until he decided to sell the Property and issued a Notice to Leave on that Ground. The leave date was 30 June 2023, but Miss Rhodes remained in the Property. Mr. Weldon stated that all rent payments stopped in May 2023.
19. Mr. Weldon stated that a sale of the Property fell through because Miss Rhodes failed to leave. He then issued a second notice to leave, on different grounds. On 31st May 2024, the First Tier Tribunal granted an order under Ground 12A of Schedule 3 of the Private Housing Tenancies (Scotland) Act 2016. As Miss Rhodes did not vacate the Property before the execution date Sheriff Officers were required to enforce the order, which they did on 2 August 2024.
20. Mr. and Mrs. Rhodes, on the basis that their opposition to the Application was on the same points, put their position to Mr. Weldon jointly.
21. Mr. Rhodes stated that he and Mrs. Rhodes did not say that they would guarantee the rent but had said that they would pay the rent over as Mr. Faulds could not be trusted or relied upon. Mr. Rhodes said that the agreement was that Mr. and Mrs. Rhodes would collect the rent from Miss Rhodes and Mr Faulds and pay it to the letting agents.

22. Mrs. Rhodes stated that she collected rent of £127.00 per week from Mr Faulds as he was paid weekly and did not have a bank account and collected the balance from her daughter. When Mr. Faulds left the Property, she collected the full rent from her daughter.
23. Mr. Weldon did not accept that the offer was only to collect the rent and not guarantee it. He referred to an email from his then agent, Joanna Daly, which referred to Mrs. Rhodes having said that she would guarantee the rent. He accepted that Joanna Daly did not follow this up with Mrs. Rhodes in writing and that Joanna Daly had not been called as a witness.
24. Mr. and Mrs. Rhodes referred to a meeting with both Mr. and Mrs. Weldon which they said had taken place at their home. Mr. Rhodes had thought this had been the first meeting to discuss the tenancy and thought it had been between Mr. and Mrs. Weldon and his wife. He was aware that he and his wife had offered six months' rent up front but Mr. and Mrs. Weldon did not accept the offer.
25. Mr. Weldon agreed that there was an offer of an upfront payment and explained that this had been rejected because of their then friendship.
26. Mr. and Mrs. Rhodes maintained that their offer had been to collect the rent from Mr. Faulds and Miss Rhodes, and, thereafter Miss Rhodes, and pay this over and that they had not offered to guarantee the rent.
27. Mr. Weldon did not accept this.
28. Mrs. Weldon gave evidence. She stated that Mrs. Rhodes had approached her to enquire about a lease of one of her and her husband's properties in Craignure for her daughter, Miss Rhodes, and her daughter's partner, Marc Faulds. She stated that the Craignure property was not available, and so, she suggested the Property in Gimmerscroft which would be available soon. Mrs. Weldon stated that she referred Mrs. Rhodes to the letting agent, Joanna Daly. Mrs. Rhodes then spoke again to Mrs. Weldon and explained that, as Marc Faulds had gambling debts, he would not pass a credit check. Mrs. Weldon's evidence was that Mrs. Rhodes offered to guarantee payment of the rent.
29. In answer to questions from the Tribunal regarding the meeting at Mr. and Mrs. Rhodes' home with all four, Mrs. Weldon thought that the meeting had been at her home and that Mr. Rhodes was not present. She recalled that she and her husband had rejected an offer by Mr. and Mrs. Rhodes to pay six months' rent upfront as the Weldons and the Rhodes had been friends at that time.

30. Mrs. Weldon was firm that the Rhodes had offered to guarantee the rent. She did not accept that the offer had been to collect and pay over the rent. She accepted that she did not know from where Mrs. Rhodes got the money for the rent.
31. Mrs. Weldon stated that she had no further involvement with the Property and was not involved in the new tenancy between her husband and Miss Rhodes.
32. In answer to questions from the Tribunal to all four of Mr. and Mrs. Weldon and Mr. and Mrs. Rhodes, the following was agreed:
1. Although they were not certain of the venue of the meeting between all four of them, they were all certain that a meeting had taken place in or around May 2019 and that an offer of six months' rent had not been accepted;
 2. The meeting had taken place before the tenancy with Miss Rhodes and Mr. Faulds commenced in 2019;
 3. All stated that they did not know how the new tenancy to Miss Rhodes came about in 2021 but thought that it had continued from the tenancy with Miss Rhodes and Mr. Faulds ;
 4. All confirmed that there had been no conversations regarding the guarantee at that time;
 5. There had been no discussion regarding what would happen if something went wrong with their unwritten agreement;
 6. All had gone well until the Notice to Leave was issued and the rent payments stopped and
 7. Mrs. Rhodes made the rent payments from 2019 until May 2023.

Additional evidence in respect of the preliminary matter

33. In addition to the Application and the oral evidence the Tribunal had the benefit of :
- i) Emails and written submissions from all Parties with the exception of Miss Rhodes;
 - ii) Emails with productions submitted by Mr. Weldon on 9 and 17 April 2024;
 - iii) An inventoried bundle of written submissions and productions lodged by Mr. Weldon on 26 August 2024 and
 - iv) An inventoried bundle of written submissions and productions lodged by Mr. Weldon on 15 January 2025.
34. The Tribunal had regard to those parts of this additional evidence which relates to the guarantee contracts.

35. In particular the Tribunal had regard to the following as having direct relevance to establishing the guarantee contracts:
- a) The various statements by the Parties setting out their respective positions as rehearsed by them in their oral evidence;
 - b) Copy text messages between Mrs. Rhodes and Mrs. Weldon dated February 2019 regarding arranging a meeting about a flat;
 - c) Copy tenancy agreement of the Property between Lucy Rhodes and Marc Faulds as tenants and Fiona Weldon as landlord dated 16 July 2019;
 - d) Copy correspondence between Joanna Daly Properties and Mr. Weldon dated July and August 2019 regarding rent payments;
 - e) Copy correspondence between Your Move and Mr. Weldon dated November 2021 regarding rent payments;
 - f) Copy text messages which appear to be from November 2023 between Mr. Rhodes and Mr. Weldon regarding late payment of rent and
 - g) Copy email from Mrs. Weldon to Scottish Fire and Rescue Service dated 24 September 2024.

Evidence in respect of the sum claimed as due and owing.

36. Mr. Weldon, with reference to the productions which he had lodged, stated that no rent payments had been made since May 2023. He stated that Miss Rhodes had remained in the Property until 1 August 2024, the day before her eviction was due to take place. Mr. Weldon stated that the rent due from May 2023 until 2 August 2024 is £7,950.00.
37. In addition and with reference to an invoice from Malcolm J. Boyd, sheriff officers, Mr. Weldon stated that, as Miss Rhodes did not vacate the Property on the date set out in the eviction order, he had to instruct sheriff officers to enforce the order carry out an eviction at a cost of £402.32.
38. Mr. Weldon advised that he did not seek the costs of damage to the Property.
39. Miss Rhodes accepted liability for the rent as claimed by Mr. Weldon. She stated that she had been advised by the local authority to remain in the Property until an eviction order was awarded against her. She agreed that she had remained beyond the date of the eviction order and only removed from the Property on the evening before the date set for sheriff officer enforcement of the order.
40. With regard to the rent, Miss Rhodes stated that she simply kept the rent and no longer has this money. She accepted that she has to repay Mr. Weldon but explained that she cannot do so promptly. Miss Rhodes explained that she has been absent from work with stress due to her housing predicament and is no longer receiving sick pay. She explained that she and her son reside in temporary homeless hostel accommodation.

Findings in Fact

41. On all of the evidence before it, the Tribunal made the following Findings in Fact:

1. Mr. Weldon is the owner of the Property;
2. Mr. Weldon has a number of properties which he rents out;
3. Mrs. Weldon manages her husband's rental portfolio;
4. Around May 2019, Mrs. Rhodes, on behalf of her daughter, Lucy Rhodes, approached Mrs. Weldon regarding a tenancy for her daughter and Marc Faulds;
5. A tenancy of the Property was offered;
6. Lucy Rhodes and Marc Faulds had a poor credit rating;
7. Mrs. Rhodes offered to collect the monthly rent to mitigate the risk to Mrs. Weldon;
8. Mrs. Weldon understood this to be an offer by Mr. and Mrs. Rhodes to guarantee payment of the rent;
9. From conversations with his wife, Mr. Weldon also understood this to be an offer by Mr. and Mrs. Rhodes to guarantee payment of the rent;
10. A meeting took place between Mr. and Mrs. Weldon and Mr. and Mrs. Rhodes regarding the tenancy in or around May 2019;
11. At the meeting, Mr. and Mrs. Rhodes offered to pay six months' rent in advance;
12. Mr. and Mrs. Weldon declined the offer;
13. No offer to collect the monthly rent or guarantee the monthly rent was made by Mr. Rhodes;
14. At that time and during until around May 2023, Mr. and Mrs. Weldon and Mr. and Mrs. Rhodes had been neighbours and friends and relations had been cordial between them;
15. A tenancy of the Property was entered into between Lucy Rhodes and Marc Faulds as Tenants and Fiona Weldon as Landlord dated 16 July 2019;
16. The tenancy agreement was prepared by Joanna Daly Properties, as letting agent for Mrs. Weldon;
17. The tenancy agreement did not provide for a guarantor;
18. Neither Mr. nor Mrs. Rhodes are a party to the tenancy agreement;
19. No further conversations took place regarding guarantees;
20. Mrs. Rhodes collected the monthly rent from her daughter and Marc Faulds and paid this to Joanna Daly Properties;
21. Marc Faulds removed from the Property at some point in 2021;
22. A new tenancy of the Property was entered into between Miss Rhodes, as Tenant, and Mr. Weldon, as Landlord, dated 12 October 2021;
23. The new tenancy agreement was prepared by Your Move, as letting agent for Mr. Weldon;
24. The new tenancy agreement did not provide for a guarantor;
25. Neither Mr. nor Mrs. Rhodes are a party to the new tenancy agreement;
26. No conversations took place regarding guarantees prior to the new tenancy;
27. Mrs. Rhodes continued to collect the monthly rent from her daughter and paid this to Joanna Daly Properties and then to Your Move;

28. There is no correspondence from either Joanna Daly Properties or Your Move which supports guarantees being created;
29. There are no text messages between Mr. and Mrs. Weldon and Mr. and Mrs. Rhodes which support guarantees being created
30. A Notice to Leave was issued on 31 July 2023 by Mr. Weldon;
31. Miss Rhodes stopped paying rent to her mother in May 2023;
32. Mrs. Rhodes stopped collecting rent from her daughter in May 2023 and so stopped paying rent to Your Move;
33. Mr. Rhodes had no role in the rent collection activity;
34. Mr. Rhodes involvement was restricted to replying to text messages regarding late payment;
35. After May 2023 when rental payments stopped, relations between Mr. and Mrs. Weldon and Mr. and Mrs. Rhodes soured;
36. Mr. Weldon sought to invoke the contracts of guarantee which he perceived to be in place;
37. Mr. and Mrs. Rhodes denied that contracts of guarantee were in place;
38. Rent amounting to £7,950.00 is due and owing by Miss Rhodes;
39. Sheriff officer fees of £402.32 were incurred by Mr. Weldon, and
40. Miss Rhodes is liable for the sheriff officer fees in terms of the tenancy agreement.

Tribunal's assessment of the evidence.

41. The Tribunal accepted the various documents lodged as part of the tribunal process at face value and had no reason to challenge them.
42. The Tribunal found Mr. and Mrs. Weldon and Mr. and Mrs. Rhodes to be credible and reliable in their evidence which they gave without exaggeration or attempt to deceive. The Tribunal found that the issue between them was a genuine misunderstanding and misinterpretation of the offer made by Mrs. Rhodes to Mrs. Weldon to collect the monthly rent for the tenancy between her daughter and partner and Mrs. Weldon.
43. The Tribunal recognised that Mr. and Mrs. Weldon operate their property portfolio as a joint enterprise, whereas, the property holdings are not joint but individual. From the email from Mrs. Weldon to Scottish Fire and Rescue Service dated 24 September 2024, it is clear that Mrs. Weldon saw herself as both owner and landlord where, in fact, it is Mr. Weldon who is owner and was landlord. The Tribunal viewed the confusion by both of them of their respective roles to have contributed to the lack of clarity in respect of the tenancy transaction with Mr. and Mrs. Rhodes.
44. The Tribunal considered that Mr. Weldon placed too much weight on the correspondence with the letting agents. The letting agents confirm that Mrs.

Rhodes will make payment of the rent and no more. The email from Joanna Daly Properties dated 19 July 2019 is of little value as the writer was not present to be questioned on it and the wording is open to a difference of interpretation. The Tribunal found it a great misfortune that neither letting agent advised Mr. and Mrs. Weldon to formalise any guarantee position, particularly as the Scottish model tenancy agreement provides for a guarantee.

45. The Tribunal found Miss Rhodes to be credible and reliable in her evidence. However, it concluded that she had taken an irresponsible approach to managing her tenancy after the first Notice to Leave was issued. As a result, she and her son are now living in temporary homeless accommodation while facing this action for rent arrears and damages.

Decision with reasons in respect of the preliminary matter

46. The issue for the Tribunal in respect of the preliminary matter is, in the absence of written guarantees, is there sufficient evidence that both Mr. Rhodes and Mrs. Rhodes each entered into a binding contract with Mr. Weldon to guarantee the obligations of their daughter's tenancy, or, at the least, to guarantee the obligation to pay rent?

47. Mr. Weldon, being the Applicant, the onus is on him, to prove that the contracts are established.

48. As explained at the start of the Hearing and as set out in paragraph 12 above, a guarantee is a personal contract whereby a person, the guarantor, promises to fulfil contractual obligations of a contract if the person bound by that contract fails to do so. Therefore, Mr. Weldon must prove a contract between him and each of Mr. Rhodes and Mrs. Rhodes.

49. The contracts which Mr. Weldon claims are subject to the guarantees are the two tenancy agreements lodged by him.

50. The Parties all stated that they understood that the second tenancy agreement was a continuation of the first tenancy agreement. However, the first tenancy agreement is an agreement between Miss Rhodes and Mr. Faulds as Tenants and Fiona Weldon as Landlord dated 16 July 2019 and the second is an agreement between Miss Rhodes, as Tenant, and Mr. Weldon, as Landlord, dated 12 October 2021. No evidence was led to link the two agreements, and so, these are not a continued agreement: they are two separate and distinct agreements between different parties.

51. There is no evidence that Mr. Rhodes made any offer in respect of rent, other than the six month advance payment offer in respect of the first tenancy agreement which offer was declined. That tenancy agreement was not with

Mr. Weldon but was with Mrs. Weldon. There is no evidence that Mr. Rhodes made any offer to Mr. Weldon in respect of the second tenancy agreement. Accordingly, no contract of guarantee is established between Mr. Weldon and Mr. Rhodes.

52. With regard to Mrs. Rhodes, from its Findings in Fact, the Tribunal accepted that Mrs. Rhodes offered to collect the rent due by her daughter and Mr. Faulds in respect of the first tenancy agreement with Mrs. Weldon and pay the rent to the letting agents. Her actions, thereafter, were exactly that: she collected rent and paid it over.

53. The Tribunal refers again to a guarantee being a personal contract whereby the guarantor promises to fulfil contractual obligations of a contract if the person bound by that contract fails to do so. Mrs. Rhodes was not fulfilling a failure of her daughter and Mr. Faulds but was enabling them to fulfil the rent obligation. This is not a feature of a guarantee. At best, Mrs. Rhodes created an undertaking to Mrs. Weldon to pay over rent which had been collected by her.

54. The Parties agree that no conversations took place regarding guarantees before the second tenancy agreement was entered into and no documentary evidence was led in support of this. There is no evidence that Mrs. Rhodes made any offer in respect of rent, other than the six month advance payment offer in respect of the first tenancy agreement which offer was declined. Again, that tenancy agreement was not with Mr. Weldon but was with Mrs. Weldon. There is no evidence that Mrs. Rhodes made any offer to Mr. Weldon in respect of the second tenancy agreement.

55. Accordingly, no contract of guarantee is established between Mr. Weldon and Mrs. Rhodes.

Decision with reasons in respect of the sum claimed as due and owing

56. The Tribunal having found in fact that the sums of £7,950.00 in rent and £402.32 in sheriff officer costs are due and owing by Miss Rhodes to Mr. Weldon, determined to make a payment order for £8,352.32 against Miss Rhodes and in favour of Mr. Weldon.

57. This decision is 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.

Karen Moore

Legal Member/Chair

31 January 2025

Date