



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/24/3121**

**Property : 47C McLelland Drive, Kilmarnock KA1 1SG (“Property”)**

**Parties:**

**Graeme Miller t/a McGregor MacLeod, 34 Alexandra Street, Kirkintilloch G66 1HE (“Applicant”)**

**James Guthrie & Co LLP, 3 Portland Road, Kilmarnock G66 2AN (“Applicant’s Representative”)**

**Carol Gallacher, 7 Lamberton Road, Stewarton KA3 3HU (“First Respondent”)**

**Michael Freeburn, WHEREABOUTS UNKNOWN (“Second Respondent”)**

**Tribunal Members:**

**Joan Devine (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined that an order for payment of £14,000 should be made.**

The Applicant sought an order for payment of £14,350 in respect of rent arrears. The Applicant had lodged Form F. The documents produced were: a Private Tenancy Agreement which commenced on 26 August 2019 (“Tenancy Agreement”) and a statement of rent arrears. A Case Management Discussion (“CMD”) was fixed for 3 December 2024 which was postponed to 17 February 2025. Notification of the date of the CMD was given to the First Respondent on 14 January 2025 and to the Second Respondent by advertisement on the Tribunal website between 14 January 2025 and 17 February 2025.

**Case Management Discussion**

A CMD took place before the Tribunal on 17 February 2025 by teleconference. Calum Haswell of the Applicant’s Representative was in attendance. There was no appearance by either Respondent. Mr Haswell told the Tribunal that there had not

been any recent contact with either Respondent. He said that the tenancy had ended in May 2024.

The Tribunal noted that the tenancy agreement provided for a deposit of £350 being paid and asked if that had been applied to the outstanding arrears. Mr Haswell did not know whether the deposit had been applied. The Tribunal noted there was no credit of £350 on the arrears statement around the end of the period of the tenancy which could have been the deposit. Mr Haswell attempted to contact his client without success to ask about the deposit. In the circumstances Mr Haswell indicated he would be content for the Tribunal to deduct £350 from the sum claimed.

### **Findings in Fact**

The Tribunal made the following findings in fact:

1. The Applicant and the Second Respondent entered into a Tenancy Agreement which commenced on 26 August 2019.
2. In terms of the Tenancy Agreement the rent was £350 per month.
3. In terms of the Tenancy Agreement a deposit of £350 was paid at the start of the tenancy.
4. In terms of section 49 of the Tenancy Agreement the First Respondent guaranteed the obligations of the Second Respondent to the Applicant.
5. In terms of section 49 of the Tenancy Agreement the First Respondent is jointly and severally liable for sums payable by the Second Respondent to the Applicant.
6. The Second Respondent failed to pay the rent in full for the period January 2020 to April 2024. After application of the deposit, the unpaid amount was £14,000.

### **Findings in Fact and Law**

1. As guarantor of the obligations of the Second Respondent to the Applicant in terms of the Tenancy Agreement, the First Respondent is obliged to pay to the Applicant the outstanding rent under the tenancy agreement totalling £14,000.

### **Reasons for the Decision**

The Tribunal determined to make an Order for payment. In terms of the Tenancy Agreement rent was due at the rate of £350 per month. The Second Respondent failed to pay the rent in full for the period January 2020 to April 2024. The unpaid amount

was £14,350. After application of the deposit of £350, the balance outstanding was £14,000. As guarantor of the obligations of the Second Respondent in terms of the Tenancy Agreement, the First Respondent is obliged to pay the outstanding rent to the Applicant on a joint and several basis.

### **Decision**

The Tribunal grants an order for payment of £14,000.

### **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.**

# Joan Devine

**Joan Devine  
Legal Member**

**Date : 17 February 2025**