



**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/21/1444**

**Re: Property at 7D Turriff Place, Dundee, DD3 8RQ (“the Property”)**

**Parties:**

**Mrs Mandy Nicolson, 15 Oakfield Court, Kelty, KY4 0EY (“the Applicant”)**

**Miss Nicola Loftus, 1 Kinghorne Walk, Dundee, DD3 6NU; Mr George Contreras, 59 Lauderdale Avenue, Dundee, DD3 9AS; Mr James Mitchell, 5 Helmsdale Crescent, Dundee, DD1 0NG (“the Respondents”)**

**Tribunal Members:**

**George Clark (Legal Member) and Helen Barclay (Ordinary 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 granted and made an Order for Payment by the Respondents to the Applicant of the sum of £7,480.44. The Applicant’s request for interest on this sum was refused.**

**Background**

1. By application, received by the Tribunal on 15 June 2021, the Applicant sought an Order for Payment in respect of unpaid rent that had become lawfully due by the First and Second-named Respondents. She was also seeking an Order for Payment against the Third-named Respondent as Guarantor for the First and Second-named Respondents. The sum sought was £7,480.44.
2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Applicant, as landlord, and the First and Second-named Respondents, as tenants, commencing on 25 October 2019 at a monthly rent of £610, and a copy rent ledger. The latter document was illegible and, following a Direction of the Tribunal on 26 July 2021, the Applicant provided a legible copy, showing arrears as at 1 June 2021 of £7,480.44, with

no rent having been paid since 24 May 2020. The Applicant also provided the Tribunal with what purported to be a Deed of Guarantee dated 25 October 2019, in which the Third-named Respondent agreed that if the Tenants, the First and Second-named Respondents, defaulted, the Guarantor agreed to pay rent at £610 per calendar month on demand and to fully compensate the Applicant for any loss, damage, costs or other expenses arising either directly or indirectly out of any breach of the Tenancy Agreement.

3. On 25 August 2021, the Third-named Respondent submitted his written representations to the Tribunal. He stated that the Second-named Respondent, who was his cousin, had asked him to be a referee in connection with his tenancy application. The Second-named Respondent had given him a form, which he had signed, photographed and sent back to him through WhatsApp. He never spoke face to face with anyone in the lettings team and it had not been explained to him that he would be held liable for any arrears if any were to occur. It was his belief that he was a referee for his cousin, who had moved out of the Property in May 2020. He was confused as to why the document indicates that his signature appeared with a named witness, when he had signed and photographed it and returned it electronically. He had no correspondence whatsoever before or since signing the form until a letter a few weeks ago said that he could be held accountable for the arrears. He felt that he had no liability in this situation.
4. A Case Management Discussion was held by means of a telephone conference call on 26 August 2021. It was noted that the tenancy had ended, the latest entry for rent due having been on 1 June 2021. The Tribunal noted that the First-named Respondent had requested that her address be withheld, and the Tribunal issued a Direction that any such application must be made in writing to the Chamber President within 14 days of receipt of the Direction and that she must set out the reasons for her request and address the test of “compelling circumstances”. The Direction stated that failure to do so would lead to her address being set out in all documents and decisions by the Tribunal, which are public documents.
5. At the Case Management Discussion, the Second-named Respondent’s solicitor submitted that Mr Contreras had left the Property on 30 April 2020 when his relationship with the First-named Respondent broke down. He had agreed with the letting agents that his name was to be removed from the lease, thus ending his obligations to pay rent thereafter. Documentation showing this arrangement would be lodged and relied on.
6. The Tribunal noted that the Third-named Respondent had stated in his written representations that the document which he signed had been sent to him and returned by him electronically, but the copy of the document before the Tribunal showed a witness’s signature next to his. The copy document was produced over two pages which appeared different in presentation and it was reasonable that the Third-named Respondent be afforded an opportunity to seek legal representation.
7. The Tribunal determined that the case should be adjourned to a full Hearing.

8. On 21 September 2021, the Applicant's solicitors, Campbell Boath, Dundee, lodged various documents with the Tribunal. They included an email from Slater Hogg and Howison Lettings ("SHH") which enclosed correspondence with the Third-named Respondent. They said that he had applied to be a Guarantor and had completed their on-line referencing system for prospective guarantors. He had also supplied his passport and a bank statement as proof of identity. This, they said, proved his intention to be a guarantor and not just a referee. Their practice on witnessing was for member of staff to witness the documentation along with the signatory. They enclosed a guarantor letter sent regarding the arrears before the end of the tenancy. Attached to the email were copies of "Referencing Reports" in respect of James Mitchell as Guarantor for George Contreras and Nicola Loftus, containing information completed by the Third-named Respondent, copies of the ID documents referred to in the email and of a "Guarantor Application Form", completed in handwriting, showing details of the Third-named Respondent's employment, including salary and confirmation that he had never received any County Court Judgements and had never been declared bankrupt. This form was signed by the Third-named Respondent and was dated 16 October 2019. Also attached to the email was a copy of a letter from the letting agents' Credit Control Team to the Third-named Respondent, dated 27 May 2021, informing him, as Guarantor for the tenancy, that the rent was in arrears to the extent of £7,480.44.
9. On 5 October 2021, the Applicant's solicitors provided a copy of the Deed of Guarantee.
10. On 13 October 2021, the Second-named Respondent's solicitors, Boyles, solicitors, Dundee, submitted to the Tribunal copies of five emails sent by the Second-named Respondent. The first of these was to Rebecca Gray of SHH and was dated 8 May 2020. In the email, he stated that he had moved out of the Property on 28 April and would not be returning. He said that he needed his name on the tenancy and that of the Guarantor, Mr Mitchell, removed. Miss Loftus would be continuing the tenancy until it ended on 30 June. He asked SHH if they could make these changes at their end. The second email, identical to the first, was sent to Emma Jones at SHH. The third email, dated 7 July 2020, was to Scott Johnston of Countrywide, stating that he had informed SHH and Countrywide that he had moved out of the Property on 30 April and asking Mr Johnston to confirm that he had received the earlier email as notice and that the Second-named Respondent's name was no longer on the tenancy. The fourth and fifth emails were to Dundee City Council Revenues Division and related to updating of Council Tax records. In them, the Second-named Respondent advised that he had moved out on 28 April, due to the breakdown of the relationship between him and the First-named Respondent.
11. On 26 October 2021, in response to the emails provided on behalf of the Second-named Respondent, the solicitor for the Applicant lodged a further email of that date from SHH, in which they stated that the Second-named Respondent had suggested to them on 13 January 2020 that he intended to vacate the Property. He had verbally been made aware of the Vacating Sharer process and SHH had followed this up with an email to the First-named

Respondent, explaining the process. On the following day, the request from the Second-named Respondent was retracted. A further request had been sent to three individuals, on 8 May and 7 July 2020. The two individuals to whom the email of 8 May was sent were on furlough and the Second-named Respondent certainly would not have received confirmation that the Vacating Sharer had been granted. He would have received “out of office” replies. With regard to the email of 7 July, Mr Johnston did not process the Vacation Sharer request, as the period of the Notice to Leave had ended on 30 June. He had simply chased the First-named Respondent to check on vacation. At no point had SHH or Countrywide confirmed that the request by the Second-named Respondent had been granted. The Vacating Sharer form had not been completed. The relevant clause within the Tenancy Agreement details the requisite process, which had been communicated by email to the First-named Respondent and, they believed, verbally to the Second-named Respondent. It would involve gaining consent from all Parties and re-referencing the remaining tenant.

## **The Hearing**

12. A Hearing was held by means of a telephone conference call on the morning of 3 November 2021. The Applicant was represented by Mr Alex Campbell of Campbell Boath, solicitors, Dundee. The First-named Respondent was not present or represented. The Second-named Respondent was represented by Mr David Rogers of Boyles, solicitors, Dundee and the Third-named Respondent was present.
13. Mr Rogers had, on 1 November, objected to the email of 26 October from the Applicant’s solicitors being lodged, as it was outwith the time limit set by the Tribunal for lodging of documents, namely 14 days prior to the Hearing and had given him very little time to obtain instructions from his client as to its contents. The Tribunal advised that it had considered his objection, but had decided to admit the email, as it related to matters which the Tribunal was confident would already have been discussed by Mr Rogers with his client, namely whether he had received any response to his emails of 8 May and 7 July 2020. Mr Rogers advised that it was his intention to call the Second-named Respondent to give evidence to the Hearing. He added that his client had been aware of the Notice to Leave by 30 June 2020 and had complied with it.
14. For the Applicant, Mr Campbell confirmed to the Tribunal that the First-named Respondent had vacated the Property at the termination of the tenancy, but he was unaware of any actual Eviction proceedings that may have followed on the serving of the Notice to Leave. The Second-named Respondent had been verbally advised of the process as to a joint tenant leaving, and this had been followed up by an email to the First-named Respondent.
15. The Applicant did not call any witnesses and Mr Rogers called his client, the Second-named Respondent, Mr Contreras, who told the Tribunal that he had taken up the tenancy in October 2019 and had lived in the Property with the First-named Respondent, who was pregnant at the time, and her child of a previous marriage. They received a Notice to Leave the Property by 30 June

2020. The relationship had broken down and he had to leave the Property before that date. He had tried to contact SHH and Countrywide for a number of weeks, but nobody picked up the calls there was no voicemail facility with any emergency number to call. Prior to that he had emailed Ms Gray and Ms Jones at SHH but neither had replied and he had not received any out of office email responses. He had made strenuous efforts to contact the letting agents to say that he had left the Property. He had understood that the First-named Respondent had continued to live in the Property after he left and that she had been claiming Housing Benefit to pay the rent. He was, however, not allowed to make contact with the First-named Respondent. The Notice to Leave had initially stated a deadline date of 25 February 2020, but that had been extended, at his request, to 30 June.

16. Mr Contreras understood and accepted that the liability to pay the rent was joint and several and that he was liable to pay rent up to 30 June 2020. He stated that he had had to leave all his clothes and other belongings in the Property when he left, and this explained why an arrangement was made for a member of his family to uplift them from the Property when it finally became vacant.
17. Mr Campbell, in cross-examination, referred Mr Contreras to Clause 24 of the Tenancy Agreement, which stated that neither Party could end the tenancy without the agreement of the landlord and the remaining tenant. Mr Contreras said that so far as he was aware, he was up to date with the rent when he left, and Miss Loftus was taking over the tenancy and was receiving Housing Benefit. As far as he was concerned, his liability ended on 30 June 2020. In answer to a question from the Tribunal, he said that he recalled the telephone conversation with SHH in January 2020. They had explained that they would switch the tenancy and would get back in contact. The process had been briefly explained to him.
18. Mr Campbell told the Tribunal that he had established that Mr Contreras had been fully aware of his liability. Mr Rogers responded that Mr Contreras believed that his liability ended on 30 June 2020, when he was due to vacate the Property in terms of the Notice to Leave. He did not know what more Mr Contreras could have done in the circumstances.
19. As this concluded the evidence in respect of the application against Mr Contreras, he and Mr Rogers then left the Hearing and the Tribunal turned to the application against the Third-named Respondent, Mr James Mitchell, who represented himself.
20. Mr Mitchell confirmed that the signature on the Deed of Guarantee was his but contended that the document was not the same as the one he had signed. He did not remember signing anything which said that he was a Guarantor. He was doing the Second-named Respondent, his cousin, a favour and, if he signed anything, his belief was that it was to act as a referee for his cousin, not as a Guarantor. Examined by Mr Campbell, he stated that he reads everything before he signs anything and that he would not have signed a document saying that he was to be liable as a Guarantor for the rent. When Mr Campbell put it to him that the Deed of Guarantee was quite clear. Mr Mitchell said that he was

not sure if he had read it. Mr Campbell reminded him that he had submitted an application to be a Guarantor and had then signed the Deed of Guarantee. Mr Mitchell's position was that the document had not been given to him in the form in which it now appeared. He said that he had read everything that he had signed and that he felt he had been coerced.

21. When Mr Mitchell concluded giving his evidence, Mr Campbell made a concluding submission that the Applicant was seeking an Order for rent arrears against the joint tenants and an Order against Mr Mitchell, as Guarantor for payment of any amounts that the First and Second-named Respondents failed to pay. He also asked the Tribunal to make an Order for interest on the sum due, at 3% per annum until paid. The Hearing then ended and the Tribunal considered all the evidence, written and oral, that had been presented to it.

## **Reasons for Decision**

22. The Tribunal dealt first with the First-named Respondent's request that her address be withheld. On 26 August 2021, the Tribunal had issued a Direction that any such application must be made in writing to the Chamber President within 14 days of receipt of the Direction and that she must set out the reasons for her request and address the test of "compelling circumstances". The Direction had stated that failure to do so would lead to her address being set out in all documents and decisions by the Tribunal, which are public documents. The Tribunal noted that no application had been made within the 14-day period by the First-named Respondent, and accordingly directed that her address should not be withheld from its Decision.
23. The First-named Respondent had not made any written representations on the merits of the application and was not present or represented at the Hearing. Accordingly, the Tribunal decided to make an Order for Payment against her.
24. The Tribunal then considered the position of the Second-named Respondent. He accepted that, although he had vacated the Property on 28 or 30 April 2020, he was liable for rent up to 30 June 2020. He also accepted that, as the Tenancy Agreement was a joint tenancy with the First-named Respondent, joint and several liability applied, but he contended that, as he had told the letting agents that he had vacated the Property and had asked them to remove his name and that of the Guarantor from the tenancy, he should not be held liable for rent due after 30 June 2020.
25. The Tribunal did not accept the Second-named Respondent's contention. He accepted at the Hearing that the process for removing him as a tenant had been briefly explained to him by the letting agents in a telephone conversation in January 2020, so he must have been aware that it was not simply a matter of his telling the letting agents that he had left and should be relieved of any ongoing obligations under the tenancy. The Tribunal had seen two emails that he had sent to the letting agents on 8 May and 7 July 2020, in both of which he had said that he needed his name and that of his Guarantor, Mr Mitchell, removed from the Tenancy Agreement. The Applicant had stated that he would

have received “out of office” responses to these emails, as the person to whom they were addressed were both on furlough at the time. Mr Contreras said that he had not received any response at all. It was not necessary for the Tribunal to determine which version of events it preferred, as the Tribunal’s view was that Mr Contreras must have known that there was a process which would have to be followed, involving obtaining the consent of both the First-named Respondent and the Applicant. Clause 24 of the Tenancy Agreement clearly stated that, to end a joint tenancy, all the joint tenants must agree to end it and that one joint tenant could not terminate the joint tenancy on behalf of all joint tenants. This meant that the joint tenancy could not be converted to a single tenancy in the name of Miss Loftus without her giving her consent. It was also clear in law that the consent of the Applicant would have been required to release the Second-named Respondent from his obligations.

26. The Tribunal accepted that restrictions during the COVID-19 lockdown would have made it more difficult for the Second-named Respondent to have email exchanges with the letting agents, but this did not entitle him to assume that his request had been granted, when he was aware from the telephone conversation in January and constructively aware from the terms of the Tenancy Agreement that there was a process to be followed before he would cease to be liable for the rent. There was no evidence presented to the Tribunal which indicated that the Applicant had consented to or acquiesced in the Second-named Respondent’s request to be removed as a tenant, or that the letting agents had confirmed that his request had been granted.
27. The Tribunal noted that the Second-named Respondent still had belongings in the Property when the tenancy finally ended but accepted his explanation that he had left at short notice in April 2020 and had been unable to take with him everything in the Property which belonged to him.
28. Having considered carefully all the evidence before it, the Tribunal determined that the Second-named Respondent remained jointly and severally liable to meet the tenants’ obligations under the Tenancy Agreement, including the liability to pay rent, until the date that the tenancy ended by the First-named Respondent also vacating the Property.
29. The Tribunal then considered the position of the Third-named Respondent, Mr Mitchell. He had argued that he did not regard the document he had signed as making him a Guarantor and that he had understood that he was merely acting as a referee for his cousin, the Second-named Respondent. The Tribunal did not accept that argument. There was evidence which established that it had been a two-stage process. Firstly, Mr Mitchell had applied to the letting agents to be a Guarantor. He had completed a Guarantor Application Form, which he signed on 16 October 2019. It clearly stated that he was to be Guarantor for “G. Contreras and N. Loftus” and he completed it with details of his employment and his earnings. He had also provided proof of his Identity, namely copies of his Driving Licence and a Bank Statement. Secondly, he had signed a Deed of Guarantee which clearly stated that in consideration of the Applicant agreeing to accept the First and Second-named Respondents as tenants, if the tenants defaulted, Mr Mitchell agreed to pay rent at £610 per calendar month on

demand. Mr Mitchell had suggested that the document he had signed was different from the Deed of Guarantee, but the second page of that Deed, which contained his signature, makes several references to the fact that it is a Guarantee and, in bold lettering at the foot of the page, it is stated “If you do not understand this Guarantee Agreement, or anything in it, it is strongly recommended that you seek professional advice from either your own solicitor or the local Citizens Advice Bureau or Housing Advice Centre for an explanation before signing it”. Mr Mitchell had told the Tribunal that he never signed anything without reading it first.

30. The Tribunal also noted that, in his emails of 8 May and 7 July 2020 to SHH, the Second-named Respondent had referred to Mr Mitchell as “Guarantor”.
31. The Tribunal was satisfied that the Third-named Respondent had actual knowledge that he was guaranteeing the rent for both the First and Second-named Respondents and that he was not merely a referee for his cousin, the Second-named Respondent. He had applied in writing to be a Guarantor for both tenants and had signed a Deed of Guarantee. Both documents were unequivocal in their terms and the Deed of Guarantee strongly recommended that he take independent advice if he was unsure of its terms. The Tribunal accepted that, due to pandemic restrictions, the documentation would all have been dealt with electronically, in this case by WhatsApp, so his signature was not witnessed, but he accepted that the signature was his, and, in any event, a Deed of Guarantee did not require signatures to be witnessed. There was no evidence to indicate that he had been coerced into signing the Deed of Guarantee.
32. Having considered all the evidence before it, the Tribunal determined that the Third-named Respondent was liable as Guarantor for the rent and other tenancy obligations of the First and Second-named Respondents and that this liability continued throughout the period between the date on which the First-named Respondent left the property and the date on which the Second-named Respondent vacated the Property.
33. The Tribunal determined that an Order for Payment in the sum sought should be made against all three Respondents, the First and Second-named Respondents as principal debtors and the Third-named Respondent as Guarantor for performance.
34. The Tribunal refused the Applicant’s representative’s request for interest on the sum specified in the Order. The Tenancy Agreement did not make any provision for interest on unpaid rent and no request for interest had been included in the application.
35. 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**

**3 November 2021**

**Date**