



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/CV/19/2427

Re: Property at 59 Dunlop Terrace, Ayr, KA8 0SW ("the Property")

Parties:

Mr Robert McNeillie, Mrs Anne McNeillie, 41 Bellesleyhill Avenue, Ayr, KA8 9BH ("the Applicant")

Miss Amanda Stewart, Mr David Anderson, 15 St Andrews Avenue, Tarbolton, KA5 5DL ("the Respondent")

Tribunal Members:

Virgil Crawford (Legal Member)

Representation:

Applicants: Mr Colin Duck, The McKinstry Company, Ayr

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that

BACKGROUND

1. On 17 January 2014 a lease was entered into creating a tenancy in relation to the Property. The lease had a covering page indicating that it was between Mr R S McNeillie and Mrs A J McNeillie as landlords and Miss Amanda Stewart as tenant;
2. The lease was signed by Mrs McNeillie as landlord. It was not signed by Mr McNeillie. It was signed by Miss Stewart as tenant;
3. The date of entry was 17 January 2014;
4. The rent was £475.00 per month;
5. From January 2018 arrears of rent began accruing and, as a result, the Applicants presented an application to the Tribunal for a payment order. The application named Miss Amanda Stewart and a Mr David Anderson as respondents;

6. The application sought an order for payment against both Miss Stewart and Mr Anderson and asked that the order be for joint and several liability;
7. As at the date of the Case Management Discussion assigned by the Tribunal the arrears of rent amounted to £4,825.00;

THE CASE MANAGEMENT DISCUSSION

8. The Applicants were not present at the Case Management Discussion but were represented by Mr C Duck, The McKinstry Company, Ayr;
9. The Respondents were not present at the Case Management Discussion nor were they represented. The place, date and time of the Case Management Discussion had been intimated to the Respondents by sheriff officers. The Tribunal being satisfied in terms of Rule 24 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017("the FTT Rules") that the Respondents had been given reasonable notice of the Case Management Discussion, in terms of Rule 29 of the FTT Rules proceeded in their absence;
10. An updated statement of rent was produced showing that, as at the date of the termination of the tenancy, the rent arrears amounted to £4,825.00. The Tribunal was satisfied that an order for payment in that amount could be made. Discussion thereafter took place in relation to exactly who any order should be in favour of and against;
11. The lease was poorly drafted and appears to have been prepared by a lay person. It purported to be by both Mr & Mrs McNeillie as landlords, but the lease was signed only by Mrs McNeillie. Mr Duck asserted that that was sufficient. The covering page clearly identified both as landlords. The lease referred to the landlords in plural terms at some points at least. Both were joint owners of the Property. There was nothing to prevent Mrs McNeillie acting as her husband's agent or signing the lease on behalf of both of them. The tribunal was willing to accept that submission and make an order for payment in favour of both Mr and Mrs McNeillie;
12. The position in relation to the Respondents, however, was not as straightforward. Mr Duck argued that, despite the fact that the written contract detailed only Miss Stewart as tenant, the true position was that both Miss Stewart and Mr Anderson were tenants. In support of this he submitted:-
 - a) Both Miss Stewart and Mr Anderson were present when the lease was signed;
 - b) Both took entry at the same time;
 - c) Mr Anderson resided there throughout the tenancy;
 - d) Both Miss Stewart and Mr Anderson dealt with the Applicants in relation to matters arising during the tenancy;
 - e) Mr Anderson paid rental payments;
13. Separately Mr Duck argued that there was an assured tenancy created in terms of s12 of the Housing (Scotland) Act 1988("the 1988 Act"). S12 provides:-

12. Assured Tenancies

(1) A tenancy under which a house is let as a separate dwelling is for the purposes of this Act an assured tenancy if and so long as:-

- a) *The tenant, or as the case may be, at least one of the joint tenants, is an individual; and*
- b) *The tenant, or as the case may be, at least one of the joint tenants occupies the house as his only or principal home; and*
- c) *The tenancy is not one which, by virtue of subsection (2) below, cannot be an assured tenancy*

14. Mr Dick argued that Mr Anderson was an individual and occupied the Property as his only or principal home. He argued, therefore, that there was an assured tenancy created in terms of s12 of the 1988 Act;
15. The Tribunal was not persuaded by these arguments. The tenancy agreement was in writing and detailed only Miss Stewart as a tenant. While Mr Anderson may have resided at the Property along with Miss Anderson, that did not make him a tenant, as opposed to a person occupying the property with the consent of the tenant. Similarly, the fact that he made some rental payments did not make him a tenant. It is not uncommon for rental payments to be made, on occasion, by persons other than the tenant of a property. Given the clear terms of the written tenancy agreement, the Tribunal was not willing to infer that Mr Anderson was an additional tenant and that he should be regarded as such;
16. In relation to the argument presented under s12 of the 1988 Act, the Tribunal was not willing to find that there were two separate tenancy agreements running at the same time, one being the contractual agreement between Miss Anderson and the Applicants, the other being a non contractual statutory assured tenancy between Mr Anderson and the Applicants. In addition, the Tribunal had regard to the terms of s12 which require a property to be "let as a separate dwelling...". Given the existence of the written tenancy agreement, the Tribunal did not accept that Mr Anderson was leasing the Property as a separate dwelling;
17. In the circumstances, The Tribunal made an order against Miss Amanda Stewart only, for payment to the Applicants in the sum of £4,825.00.

FINDINGS IN FACT

18. The Tribunal found the following facts admitted or proved:-
 - i. On 17 January 2014 a lease was entered into creating a tenancy in relation to the Property. The Applicants were landlords. Miss Amanda Stewart was the tenant;
 - ii. Mr David Anderson was not a tenant of the Property;
 - iii. The rent was £475.00 per month;
 - iv. From January 2018 arrears of rent began accruing
 - v. As at the date of the Case Management Discussion assigned by the Tribunal the arrears of rent amounted to £4,825.00;

DECISION

The Tribunal granted an order against the Miss Amanda Stewart for payment of the sum of FOUR THOUSAND EIGHT HUNDRED AND TWENTY FIVE POUNDS (£4,825.00) STERLING to the Applicants

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.

Virgil Crawford

11 October 2019

Legal Member/Chair

Date