



**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/19/0053**

**Re: Property at Flat G/1, 27 Stepps Road, Glasgow, G33 3NG**

**Parties:**

**McDonald Court Limited, Ladywell Business Centre, 94 Duke Street, Glasgow, G4 0UW (“the Applicant”)**

**Mrs Anne Strachan, 116 Gartcraig Road, Riddrie, Glasgow, G33 2SR (“the Respondent”)**

**Tribunal Member:**

**Melanie Barbour (Legal Member)**

**Decision (in absence of the Respondent)**

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

**Background**

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 70 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for payment of the sum of £2535 in relation to obligations arising from a guarantee given by the Respondent for a tenant of an assured tenancy. The Applicant was the landlord.
2. The application contained:-

- a copy of the Tenancy Agreement;
  - a copy of a tenancy rent statement; and
  - a copy of the Guarantor agreement.
3. The Applicants' representative, Mr George Reynolds, from Smart Move Estate Agents (Scotland) Ltd, appeared on behalf of the Applicant. There was no appearance by the Respondent.
  4. Notification of today's hearing had been made by sheriff officers on 3 April 2019. As I was satisfied that the Respondent had received notice of the today's case management discussion I was prepared to proceed in her absence.
  5. I had raised a preliminary point regarding jurisdiction with the parties, whether or not the Tribunal had the jurisdiction to deal with the case as it was one which involved *an obligation under a guarantee*. I drew to the parties attention the First Tier decision Case Reference FTS/HPC/CV/18/1571 where part of the application, which dealt with the alleged breach of the obligation arising out of a guarantee agreement, had been rejected.

#### The Hearing

6. The Applicants' representative addressed me on the jurisdiction issue, he first noted that the application had been accepted at the sifting stage by a legal member and he submitted that there was nothing different now and accordingly, he considered that jurisdiction had already therefore been accepted.
7. He submitted that he had read decision FTS/HPC/CV/18/1571 and he did not agree with its conclusion. He considered that the decision could be distinguished from this application as that one had been in two parts pursuing a tenant and a guarantor.
8. He submitted that this case involved an assured tenancy and the matter to be determined in this case (i.e. enforcing the guarantee) arose from the assured tenancy. He submitted that what else this could the matter raised in the application be.
9. He considered that the circumstances in the present case were different from the FTS/HPC/CV/18/1571. He referred me to the fact that the Respondent had been the witness to the tenant signing the tenancy agreement, and further the guarantee set out in specific terms that *"I will act as guarantor as stated above. I have had the opportunity to read and accept the tenancy agreement. I will accept that you will contact me when the tenant does not pay, and I will make payment."*
10. He also considered that the sheriff court case, namely *Sauchiehall Street Properties One Ltd v Emi Group Ltd 2015 Hous L R 24*, which was referred to in Decision FTS/HPC/CV/18/1571 could also be distinguished from this application as that case involved a commercial lease and not an assured tenancy.

11. He drew my attention to the new Scottish Government Model Tenancy Agreement for the Private Residential Tenancies and he noted that it contains a style clause which could be used for guarantees. He considered that given that the new model agreements contain a guarantee condition, it would be perverse to think that the Scottish Government had enacted the new tenancy regime, transferring functions to the Housing and Property chamber to deal with the tenancy cases but expected landlord's to seek to enforce a guarantee obligation in the sheriff court.
12. He considered that the powers of the sheriff which had been transferred to the First Tier Tribunal included the powers to deal with guarantees. He felt that it would not be in keeping with the spirit of the legislation to refuse to accept jurisdiction and it would be a minefield for parties if the First Tier Tribunal could not take these cases. He also considered that he may be prejudiced in relation to pursuing rights of appeal given the strict time limits within the rules, if he were to go make an application to the sheriff and the sheriff refused jurisdiction too.
13. He submitted that the Respondent had not honoured the agreement that she had entered into and an order should be granted in favour of the Applicant.

#### Findings in Fact

14. The Tribunal found the following facts to be established:
15. A tenancy agreement was entered into between the Applicant and the tenant. It was entered into on 26 October 2015.
16. The tenancy agreement provided that monthly rent of £495 was due per calendar month.
17. The signing of the tenancy agreement by the tenant was witnessed by the Respondent.
18. That the rental statement showed amounts due each week, amounts received, and rent outstanding and the balance as at 19 June 2018 was in debit and amounted to £2535.
19. That the Respondent had signed a guarantor form on 21 October 2015 for the property Flat G/1, 27 Stepps Road, Glasgow for the tenant Scott Alexander Strachan.
20. That the guarantor form stated that "*I will act as guarantor as stated above. I have had an opportunity to read and accept the tenancy agreement. I will accept that you will contact me when the tenant does not pay and I will make payment.*"
21. That the Respondent had been a witness to the tenant signing the tenancy agreement.

## Reasons for Decision

22. Section 16 of the Housing (Scotland) Act 2014 provides that the First Tier Tribunal has jurisdiction in relation to actions arising from a number of tenancies, including those arising under an assured tenancy within the meaning of section 12 of the Housing (Scotland) Act 1988.

23. The first issue to consider is whether or not I have jurisdiction to deal with this case. Section 16 of the Housing (Scotland) Act 2014 provides that :-

*“The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal—*

*(a)...*

*(b)...*

*(c)an assured tenancy (within the meaning of section 12 of the Housing(Scotland) Act 1988 (c.43)).*

*(2)But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.*

*(3)... .”*

24. I had asked the parties to consider the issue of jurisdiction and drew their attention to Decision Case Reference FTS/HPC/CV/18/1571 where an application (in part) seeking to enforce an obligation arising from a guarantee was rejected, reference being made in that decision to the *Sauchiehall Street Properties One Ltd v Emi Group Ltd 2015 Hous L R 24* where the sheriff decided he did not have jurisdiction to deal with that case which also involved seeking to enforce the obligations against a guarantor in respect of a lease agreement. I consider however that the *Sauchiehall Street Properties* case be distinguished from the present proceedings as the sheriff stated in that case that, *“The preliminary issue for determination is whether the present proceedings, being proceedings by a landlord against the guarantor of a tenant’s obligations, have as their object a tenancy of immovable property.”* Whereas the issue before me under Section 16 of the 2014 Act is whether a guarantee can be considered to be an *“.. action arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal— ... (c)an assured tenancy (within the meaning of section 12 of the Housing(Scotland) Act 1988 (c.43)).*

25. I consider that the issue in the *Sauchiehall* case is narrower than the jurisdiction issue before me as I think that *proceedings having as their object a tenancy of immovable property*, is not the same as to *“actions arising from the [an assured] tenancy.*

26. I have considered Sheriff Jamieson’s Note in *Parker and ano. v Inkersall Investments Ltd [2018] SC Dum 66* where at the end of that Note the Sheriff

considers the question of the jurisdiction of the First Tier Tribunal as it is not prescribed which actions may be considered by the First Tier Tribunal, and Sheriff Jamieson, addresses some matters to aid interpretation on the issue of jurisdiction. . At Para 37 he suggests that "*A more cautious interpretation might be to limit the transferred jurisdiction to contractual disputes arising from the tenancy itself ... as only these directly arise from the tenancy in question.*" And further at paragraph 40 he states "*In this regard it should be noted that an overly literal interpretation of what is meant by the sheriff's jurisdiction arising from assured and private residential tenancies might result in consequences not intended by parliament.*"

27. The Scottish Government's Model Private Residential Tenancy Agreement does include a clause at 38 "the guarantor".

28. I note that Private Housing (Tenancies) (Scotland) Act 2016 provides that :

*Section 71 First-tier Tribunal's jurisdiction*

*(1) In relation to civil proceedings arising from a private residential tenancy—*

*(a) the First-tier Tribunal has whatever competence and jurisdiction a sheriff would have but for paragraph (b),*

*(b) a sheriff does not have competence or jurisdiction.*

*(2) For the purposes of subsection (1), civil proceedings are any proceedings other than—*

*(a) the prosecution of a criminal offence,*

*(b) any proceedings related to such a prosecution.*

29. I find the submission by the Applicant persuasive in as much as the inclusion of the Guarantor clause in the new model tenancy agreement prepared by the Scottish Government, may lend weight to a finding that Parliament had intended that the First Tier Tribunal should deal with civil matters arising from those agreements, and this includes any contract dispute arising from the breach of the Guarantor clause. I think that this would be in keeping with Sheriff Jamieson's consideration of the jurisdiction of the First Tier Tribunal, when he considered the consequences of dealing with matters not intended by the Parliament.

30. I have had regard to the fact that the Scottish Parliament have included guarantor clauses in their model tenancy, and I think that guarantor clauses are civil proceedings and the First Tier tribunal should have jurisdiction to deal with these cases.

31. Given that there is a style guarantor clause in the new private model tenancies agreements; and considering that that clause would fall within the terms of section 71 of the 2016 Act; I consider therefore that a breach of a guarantee obligation maybe an obligation which arises from an assured tenancy agreement

in an action arising from an assured tenancy in terms of Section 16 of the 2014 Act.

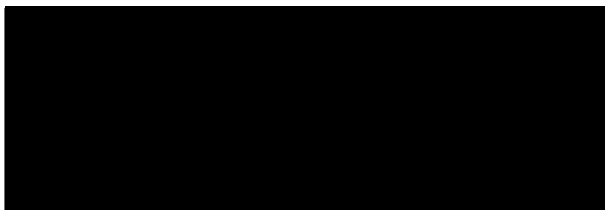
32. I consider in this case that there is a sufficient connection between the guarantee and the tenancy agreement, and the guarantee sets out that the Respondent obliged herself that she would "... act as guarantor as stated above. I have had an opportunity to read and accept the tenancy agreement. I will accept that you will contact me when the tenant does not pay and I will make payment."
33. I consider therefore that the guarantee form created obligations upon the Respondent and that these obligations were ones which arise from an assured tenancy and I therefore have jurisdiction to deal with this case.
34. Given that the tenancy agreement created obligations between the landlord and tenancy and one of those obligations was to pay rent, in the event that rent was not paid by the tenant then the Respondent is obliged to do so. The Respondent has failed to meet her obligations under the guarantee.
35. On the basis of the evidence submitted and having regard to all papers submitted including the application, and the verbal submission by the Applicant, I consider that I should make an order for the sum sued for.

#### Decision

36. I grant an order in favour of the Applicant for TWO THOUSAND FIVE HUNDRED AND THIRTY FIVE POUNDS (£2,535.00) STERLING against the Respondent.

#### **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.**



Legal Member/Chair

29. 4. 19

Date