

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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/18/2521**

**Re: Property at 1F2 20 Lorne Street, Edinburgh, EH6 8QP (“the Property”)**

**Parties:**

**Places for People Scotland Limited, 1 Hay Avenue, Edinburgh, EH16 4RW (“the Applicant”)**

**Miss Agnieszka Ogradowska, Mr Graeme Wallace, Flat 4, 5 Salamander Court, Edinburgh, EH6 7HY; 1F2 20 Lorne Street, Edinburgh, EH6 8QP (“the Respondent”)**

**Tribunal Members:**

**Anne Mathie (Legal Member)**

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

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

- **Background**  
This is an application in terms of Rule 70 seeking a payment order for rent arrears. At the time of the application being made on 11 September 2018 rent arrears were stated to be £1760. A copy of the tenancy agreement and a rent statement were lodged with the application. There was some difficulty in locating the title deeds of the Property but Registers of Scotland emailed the Tribunal on 15 October 2018 to advise that the subjects in the application were in the process of transferring from the Sasine Register to the plans based Land Register and various options were offered in respect of obtaining evidence of title. A copy of the title deeds was subsequently received by the Tribunal. A Case Management Discussion was assigned 15 March 2019. Parties were notified of the Case Management Discussion by Sheriff Officers on 25 February 2019. The respondents were advised that they had until 12 March 2019 to lodge written representations with the Tribunal. They were

also advised that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a decision on the application which may involve making or refusing a payment order. The respondents were advised that if they did not attend the Case Management Discussion this would not stop a decision or order being made by the Tribunal if the Tribunal considers that it has sufficient information before it to do so and the procedure has been fair. By email dated 27 February 2019 the applicant's representative requested an amendment to the sum claimed from £1760 to £5930 in terms of Rule 14A of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. This request had been intimated to the respondents. The Tribunal wrote to the respondents on 6 March 2019 advising that this request would be dealt with as a preliminary issue at the Case Management Discussion on 15 March 2019 and that in the meantime the respondents should lodge a written response to the request to amend within 7 days. No written representations about the application or the request to amend have been received from the respondents.

A Case Management Discussion was held on 15 March 2019. Nicola Caldwell appeared on behalf of the applicant and the respondents appeared on their own behalf. The first respondent advised that she had legitimately removed from the Property approximately six months previously and had given notice and had handed her keys back. The second respondent did not dispute the arrears including the up-to-date arrears figure. An adjournment of approximately half an hour took place to allow Ms Caldwell to take her client's instructions but the person she needed to speak to was not available. A copy of the up-to-date rent statement was provided. The first respondent advised that she had removed from the Property on 11 October 2018. The Tribunal advised that she would bear some responsibility for any arrears up until the date she removed from the Property. The Case Management Discussion was adjourned to a further Case Management Discussion today. This was to allow further information to be provided in relation to the first respondent's removal from the Property. In the interim the applicant's solicitor lodged an amendment request to increase the payment order sought to the sum of £7320 in terms of Chamber Rule 14A. This was intimated to the respondents by the Tribunal on 21 March and the Tribunal asked for any written representations in respect of this within 7 days. The Tribunal also advised that this would be dealt with as a preliminary matter at today's Case Management Discussion. No written representations have been received. The Tribunal received an email from the applicant's solicitors yesterday advising that they would be seeking a payment order against the first respondent in the sum of £2011.34 (being the arrears as at 11 October 2018 when she vacated the

Property) and would be seeking an order for payment against the second respondent in the sum of £7320 being the whole sum due.

- The Case Management Discussion took place today in the absence of the respondents. Nicola Caldwell of TC Young Solicitors again appeared on behalf of the applicants. The Tribunal was satisfied that the respondents were aware of the Case Management Discussion today as they were handed notification of this at the last Case Management Discussion on 15 March 2019. An up-to-date rent statement was provided by Ms Caldwell showing rent arrears in the sum of £7361.70. This figure differed from the figure in the applicant's request to amend due to the fact that there had been a rent increase in April. Due to lack of notification, and the absence of the respondents, the applicants would be seeking the figure of £7320. Discussion took place of the calculation involved in separating the arrears into the part which was due jointly and severally until the first respondent removed from the Property on 11 October 2018 and the remainder. The figure had been calculated by multiplying the monthly rent payment of £695 by 12 and dividing by 365 to get a daily rental rate of £22.85. This was then multiplied by 11 for the 11 days in October 2018 before the first respondent removed from the Property and this was added to the arrears up until October 2018 of £1760 making a total of £2011.34. The Tribunal would require to issue two separate orders – one for the period up until 11 October 2018 when both respondents were jointly and severally liable for the arrears and one for the balance which had accrued after the first respondent had removed from the Property solely against the second respondent. It was agreed that the balance of the arrears was £5308.66.
- Findings in Fact  
The respondents were jointly and severally liable for arrears of rent until the first respondent removed from the Property on 11 October 2018 in the sum of £2011.34.  
The second respondent was solely responsible for arrears of rent from 12 October 2018 in the sum of £5308.66.
- Reasons for Decision  
There being rent due under the tenancy agreement which had not been paid in full the respondents are liable to the applicant in respect of the underpayment.
- Decision  
That two payment orders should be granted, one for the period until 11 October 2018 in the sum of £2011.34 when both respondents continued to reside in the Property and were jointly and severally liable for the payment of rent and one for the period from 12 October 2018 when only the second respondent resided in the Property in the sum of £5308.66.

## **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.

Anne Mathie

Legal Member/Chair

3 May 2019

Date