



**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/22/0584**

**Re: Property at 86 Broad Street, Cowdenbeath, Fife, KY4 8JD (“the Property”)**

**Parties:**

**SNRM Property Ltd, 49 North Gyle Loan, Edinburgh, EH12 8JJ (“the Applicant”)**

**Ms Tracy Baxter, residing at 276 Broad Street, Cowdenbeath, Fife, KY4 8JE;**

**Miss Chloe McBeth, formerly residing at 86 Broad Street Cowdenbeath KY4 8JD and whose present address is to the applicant unknown and ,**

**Miss Abbie McBeth, formerly residing at 86 Broad Street Cowdenbeath KY4 8JD and now at 2 Craighton Place, Cowdenbeath KY4 8JX (“the Respondents”)**

**Tribunal Members:**

**James Bauld (Legal Member)**

**Helen Barclay (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that that an order should be granted for payment in the sum of SEVEN THOUSAND , SEVEN HUNDRED AND TWENTY SIX AND FORTY ONE PENCE (£7,726.41) with interest thereon at the rate of eight (8%) per centum per annum running from the date of the decision of the First-tier Tribunal to grant this order, being 13 January 2023, until payment**

## Background

1. By application dated 1 March 2022, the applicant sought an order for payment against the respondents under Section 71 of Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) and in terms of rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
2. On 20 April 2022 the application was accepted by the tribunal and referred for determination by the tribunal.
3. Case management discussions in respect of this application had taken place on 1 July 2022 and on 30 September 2022. Reference is made to the notes issued by the tribunal after each of those case management discussions .
4. After the case management discussion on 30 September 2022, the tribunal noted that three issues remained in dispute between the parties. There was no dispute that rent arrears were owed in respect of the tenancy.
5. The issues in dispute were noted as follows.
  - i. Was a new tenancy created between the applicant and Chloe McBeth alone in or around June 2021 ?
  - ii. If so, what liability attaches to Abbie McBeth in respect of the total rent arrears due as at 5 September 2022 ?
  - iii. If a new tenancy was created in or around June 2021, was agreement also reached that the guarantee signed by Mrs Tracy Baxter on 23 September 2019 was now to be treated as withdrawn and no longer relevant to the new tenancy between the applicant and Chloe McBeth alone and that Mrs Baxter was released from her obligations under the guarantee ?
6. The tribunal thereafter decide to fix a hearing in respect of this application and issued directions to the parties regarding the lodging of further documents.
7. In particular, the tribunal ordained the respondents to lodge copies of documents which the respondents claimed would prove that a fresh tenancy agreement had been created between the applicant and Chloe Macbeth alone.
8. The respondents were also ordained to lodge documents relating to the housing benefit application claimed to have been made on behalf of Chloe Macbeth and emails between the applicant’s letting agent and respondent Tracy Baxter confirming that guarantee signed by her in September 2019 was now to be treated as withdrawn.
9. The tribunal fixed a hearing to take place on 13 January 2023.

10. Appropriate intimation of that hearing was sent to the applicant. Intimation of the hearing was sent to the respondent Tracy Baxter by email. She had consented to such intimation .
11. Intimation of the hearing was sent to the respondents Chloe McBeth And Abbie Macbeth by recorded delivery post.

### **The hearing**

12. The hearing took place on the 13 January 2023. The applicant was represented by Mr. Ruthven Bell, solicitor, Jackson Boyd, Solicitors, Glasgow. He was accompanied by the applicant's director, Mr Scott Sanford
13. There was no attendance or representation on behalf of any of the respondents.

### **Summary of discussions**

14. The tribunal members asked various questions of the applicant's solicitor, and the applicant's director.
15. It was noted that the tenancy of the property had ended on 9 October 2022. The deposit of £675 has been returned to the applicant and had been applied to the rent account. The respondents had made an additional payment of £123.82. The arrears at the end of the tenancy amounted to £7,726.41.
16. The tribunal noted that Abbie Mcbeth was now residing at a new address, 2 Craighton Place, Cowdenbeath KY4 8JX . The tribunal noted that the applicant had no up-to-date address in respect of Chloe Macbeth.
17. The applicants director, Mr Sanford indicated that he had attended at the property on a regular basis between the end of the tenancy and the date of the hearing. If any mail had arrived for either Chloe McBeth or Abbie McBeth he had marked it as "return to sender" and had passed it to Royal Mail.
18. The applicant's solicitor invited the tribunal to grant the payment order sought in the new restricted sum of £7,726.41. It was his position that the respondents had effectively conceded at the previous Case Management Discussions that a sum in respect of rent arrears was owed, and that it was for Mrs Baxter to produce evidence that she was no longer subject to the guarantee. She had been given ample opportunity to do so and had failed to produce any documents to that effect. He wished the order to be granted against the respondents, jointly and severally, and he wished interest to be added to the sum claimed at the rate of 8% per annum. This interest rate was contained in the tenancy agreement
19. The tribunal indicated to the applicant's solicitor that it would briefly adjourn to consider the position.

20. After a brief adjournment and a discussion between the tribunal members, the tribunal resumed and indicated to the applicant that the tribunal would grant the order sought and would issue a decision and reasons for same.

21. The hearing was then concluded

### **Findings in fact**

22. The Applicant and the Respondents Abbie McBeth and Chloe McBeth as respectively the landlord and tenants entered into a tenancy of the property which commenced on 5 October 2019

23. The respondent Tracy Baxter signed a "Tenant Guarantor Form" on 23 September 2019 where she undertook to indemnify the applicant in respect of all claims arising from the tenancy

24. The tenancy was a private residential tenancy in terms of the Act

25. The agreed monthly rental was £675

26. The tenancy had ended on 9 October 2022

27. Rent arrears had accrued at the end of tenancy amounting to £7,726.41

### **Reasons for decision.**

28. The tribunal were content that the sum claimed was owed and represented unpaid arrears in respect of the tenancy which had existed between the parties.

29. The tribunal was satisfied that the respondents from their previous attendance at the case management discussions had effectively conceded that significant rent arrears were owed and that the tribunal would be required to make an order for payment.

30. The only matters which were in dispute after the previous Case Management discussion was whether the tenancy agreement between the parties had been amended in June 2021 and had been converted to a sole tenancy in the name of Chloe McBeth and whether the guarantee previously granted by Mrs Tracy Baxter on 23 September 2019, was now to be treated as withdrawn.

31. The tribunal notes that Mrs Baxter and the other respondents provided no evidence to show that the guarantee had been withdrawn nor that all parties had agreed a new tenancy agreement to commence in around June 2021 leaving Chloe McBeth as a sole tenant.

32. The tribunal was content that the respondent had been ordained to produce this evidence and had been warned with regard to the consequences of their failure to do so.

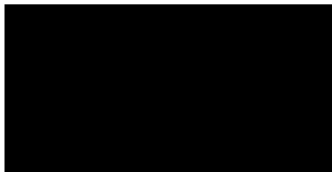
33. The tribunal was content that the sum claimed represented the final amount of arrears in the tenancy, that the tenancy remained a joint tenancy between the applicant and both Chloe McBeth and Abbie McBeth and that the guarantee granted by Mrs Baxter on 19 September 2019 remained in place and that she effectively was jointly and severally liable with thee tenants for the outstanding arrears

### **Decision**

The order for payment of the sum of £7,761.24 together with interest at 8% per annum is granted

### **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.**



13/01/2023

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**Legal Member/Chair**

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**Date**