



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/20/2093**

**Re: Property at 1 Whiteside Street, Rigside, Lanark, ML11 9ND (“the Property”)**

**Parties:**

**Mr Mirzan Miah, 85 Duckett Street, London, E1 4RW (“the Applicant”)**

**Damien Dunlop, Miss Karli Rae, Mr James Rae, 2 Albert Court, Stewarton, Kilmarnock, KA3 5PH; 176 Quarry Street, Motherwell, ML1 4HJ; 10 Catriona Way, Holytown, Motherwell, ML1 4NS (“the Respondent”)**

**Tribunal Members:**

**Anne Mathie (Legal Member) and Melanie Booth (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order in the sum of £2000 in respect of rent arrears be made.**

**Background**

1. An application was submitted to the Tribunal dated 2 October 2020 in terms of Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 by the Applicant’s representative. In terms of the application, the order sought from the Tribunal was *“the sum of £2250 in relation to unpaid monthly rent of £400 due on the 21/04/2020, 21/05/2020, 21/06/2020, 21/07/2020 and 21/08/2020 and an invoice for carpet cleaning following the recovery of the property.”*
2. Along with the application form, the Applicant’s representative lodged the following documents:
  - A copy of the Private Residential Tenancy Agreement
  - Deed of guarantee
  - Your Move Account statement

- Letter of authority from the Landlord for his representative to act
- Invoice 0093 from iCleanFloorcare dated 23/9/2020
- Photos of the carpet in the Property

3. The Tribunal wrote to the Applicant's representative on 15 October 2020 asking for further information about the whereabouts of one of the Respondents, Damian Dunlop, whose contact address was stated to be "unable to locate" in the application paperwork. The Tribunal also asked for a rent statement showing the period, rent due, rent paid and running total of arrears.

4. The Applicant's representative responded by email of 19 October 2020 with a statement of arrears and advising he would come back to the Tribunal regarding "Service by Advertisement". He confirmed that he had asked for details of Mr Dunlop's whereabouts from one of the other Respondents, Karli Rae.

5. The Applicant's representative emailed the Tribunal again on 23 October 2020 to say that Mr Dunlop was unable to be traced. He advised that they had removed his name from the application.

6. The application was accepted and assigned to a Case Management Discussion on 15 December 2020.

7. The Case Management Discussion took place by teleconference due to the global pandemic on 15 December 2020. The Applicant was represented by David Gibb of Hamilton Fraser and Karli Rae and James Rae were personally present. Damion Dunlop was included in the application but his whereabouts could not be located and, at the outset of the Case Management Discussion, Mr Gibb indicated that the Applicant did not intend to proceed with any application against Mr Dunlop. This was, however addressed at a later stage of the Case Management Discussion.

8. Three issues of dispute were identified at the Case Management Discussion:

- Was Mr James Rae's status as a guarantor formally revoked after the guarantee was signed?
- Was the sum due for the £250 carpet cleaning bill included in the deposit retained by the Applicant meaning that the debt had already been satisfied?
- Ms Rae denied liability for the carpet cleaning bill on the basis it was caused by damp in the Property and was not caused by her or her co-tenant.

9. A number of facts were agreed at the Case Management Discussion:

- It was agreed that there was a valid Private Residential Tenancy between the parties dated 21 February 2020.
- It was agreed a deposit was paid of £450.
- It was agreed the monthly rent due was £400.

- It was agreed that at the time of the Case Management Discussion the sum claimed of £2000 was lawfully due for payment as rent and remained unpaid.
- It was agreed that Mr James Rae signed a guarantee and on the face of it he was jointly and severally liable for the rent arrears which were not in dispute.
- It was agreed that Mr James Rae willingly signed the guarantee and knew the legal effect of what he was signing.
- It was agreed that there was a legitimate dispute about whether Ms Karli Rae had subsequently received email correspondence from the letting agent revoking Mr James Rae's status as guarantor. That was said to have come about as she had commenced employment at the time, whereas the guarantee was only in place because when the tenancy had commenced, she had been out of work.
- It was implicit that Ms Karli Rae was certainly liable for at least the £2000 rent arrears.
- It was agreed that the carpets were damaged but there was an evidential issue about whether Ms Karli Rae had received email correspondence from the letting agent confirming that this sum had been included in the deposit that had been retained by the Applicant following the end of the tenancy.
- The Applicant's position was that the £250 carpet cleaning bill was not recovered from the deposit which was insufficient to make good the repairs required, and the carpet cleaning bill should be recovered as an additional stand-alone sum. Ms Karli Rae indicated emails she received could resolve this by showing this not to be the case. As noted, Ms Karli Rae denied liability for any damage in any event.

10. It was decided that a full hearing was necessary to resolve the evidential issues in dispute.

11. Discussion took place of the whereabouts of Mr Damian Dunlop and Mr Gibb indicated he would pursue the application against Mr Dunlop if provided with his address.

12. The implications of "*joint and several liability*" were also discussed.

13. A Notice of Direction dated 15 December 2020 was issued after the Case Management Discussion directing parties to lodge any evidence with the Tribunal at least 14 days in advance of the Hearing and to lodge the names and addresses of any witnesses they wished to rely on at least 14 days before the Hearing. The Notice of Direction also directed the Applicant to provide the address of Damian Dunlop within 7 days if they wished him included as a Respondent.

14. No further evidence, except for an email with Mr Damian Dunlop's address, and no list of witnesses was received in advance of the hearing.

## The Hearing

15. The application was assigned to a hearing today by teleconference due to the global pandemic. The Tribunal noted that details of the application, associated papers and today's hearing had been served on Mr Damian Dunlop by Sheriff Officers on 23 December 2020 at the address above which had been provided by Ms Karli Rae. He was advised in the letter that he was required to attend today's hearing. The paperwork served on Mr Damian Dunlop included the Case Management Discussion Notification letter which provides:

*“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 papers also advised that if the respondent did not take part in 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.”*

16. Mr David Gibb, now of Tay Lettings attended on behalf of the Applicant. Ms Karli Rae and Mr James Rae appeared on their own behalf. Mr Damian Dunlop did not attend.

17. At the outset it was confirmed that the Applicant no longer sought the carpet cleaning costs and only now sought the rent arrears of £2000.

18. It was agreed by parties that the end date of the tenancy was 21 September 2020.

19. The only issue then remaining was whether Mr James Rae's status as guarantor had been revoked by the letting agents.

20. Several adjournments took place to allow for email evidence to be exchanged between parties in relation to this matter. Mr David Gibb provided an email from Your Move advising that there had been no request to remove Mr James Rae as guarantor. Ms Karli Rae provided two emails from Your Move in relation to Mr James Rae. The email dated 4 September 2020 stated *“Looking at your account, there is no guarantor on file of Mr James Rae. To remove the guarantor, you are to be referenced and a new tenancy set up. This has been done.”* Ms Karli Rae's position was that she believed a new tenancy agreement had been set up which she hadn't yet signed due to the pandemic. Mr David Gibb's position was that Letting Agents were using electronic signatures as allowed in terms of the 2016 Act.

## Findings in Fact

21. That the guarantee agreement dated 21 February 2020 had not been revoked and remained in force.

22. That all three Respondents were jointly and severally liable for the rent arrears.

### **Reasons for Decision**

23. The Tribunal took into account all the written evidence before it along with the oral submissions of parties. While the Tribunal had some sympathy with the Respondents, as the email from Your Move of 4 September was confusing, there remained a valid deed of guarantee in place.

### **Decision**

24. That an order for payment in the sum of £2000 for rent arrears be made jointly and severally against all three Respondents.

### **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**

**5 February 2021**

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**Legal Member/Chair**

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**Date**

Anne Mathie