



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017.

Chamber Ref: FTS/HPC/CV/20/2286

Re: Property at Orchard House, Howie Lane, Peterculter, AB14 0PU (“the Property”)

Parties:

Mr Howard Wigg, 53 Waltham Road, Overton, Basingstoke, RG25 3NE (“the Applicant”)

Miss Jodie Denise Ball, formerly residing at Orchard House, Howie Lane, Peterculter, AB14 0PU and now residing at 72 Grant Road, Banchory, AB31 5UU; Mr Michael James Hawke, formerly residing at Orchard House, Howie Lane, Peterculter, AB14 0PU and whose current whereabouts are unknown (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member)

Decision (in absence of the Second-Named Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for payment of the undernoted sum to the Applicant(s):

Sum of ONE THOUSAND TWO HUNDRED AND SEVENTY-FIVE POUNDS AND (£1,275) STERLING

- Background
- 1. An application dated 2 November 2020 was submitted to the Tribunal under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking a payment order against the Respondents in relation to rent arrears accrued under a private residential tenancy agreement.

- The Case Management Discussion
2. A Case Management Discussion took place on 9 February 2021 by way of tele-conference. The Applicant was represented by Mr Kingdon of Peterkins. The First-Named Respondent was personally present. There was no appearance by or on behalf of the Second-Named Respondent. The application had been intimated on the Second-Named Respondent by way of Website Advertisement between 5 January 2021 and 9 February 2021, due to the Second-Named Respondent's current whereabouts being unknown. The Tribunal was accordingly satisfied that the CMD could proceed in the Second-Named Respondent's absence.
 3. The Applicant's representative moved for the order for payment to be granted in the sum of £1,275. The parties had entered into a Private Residential Tenancy Agreement (the "Agreement"). The monthly rent due under the Agreement was £1275. The Respondents had failed to make payment of rent in April 2020, in the sum of £1275. Agreement had been made with the Second-Named Respondent to defer payment of this sum until October 2020, due to the Second-Named Respondent having a reduced income caused by the Covid pandemic, however this was never paid. It was submitted that the First-Named Respondent had moved out of the property on or around December 2019 however the joint Agreement had continued until the Second-Named Respondent agreed to enter into a further lease in his sole name in May 2021. Both parties were jointly and severally liable for the rent payment due in April 2021.
 4. The First-Named Respondent submitted that she had removed from the Property on or around October 2020 and had advised the agent of this. She had thought this would be sufficient to remove herself from any ongoing liability under the joint Agreement under which she was jointly and severally liable with the Second-Named Respondent for payment of rent. She had been assured by the Second-Named Respondent that he would enter into a sole tenancy to bring the joint Agreement to an end. He failed to do so until May 2021. She was unaware of the agreement to defer the April rent payment until October. She had taken advice from Citizens Advice Bureau who had advised her that she would remain jointly and severally liable for payment of rent until such time as the joint Agreement was brought to an end by both Respondents and a new tenancy entered into by the Second-Named Respondent. She found this to be unfair as she had no control over the Second-Named Respondent and it was his fault that the sole tenancy hadn't been signed until May 2021. She accepted that she was a joint tenant under the agreement in April 2021 when the rent arrears accrued.
- Findings in Fact
5. The Tribunal made the following findings in fact:
 - (i) The parties entered into a Private Residential Tenancy Agreement ("the Agreement") which commenced 27 December 2017;

- (ii) In terms of Clause 2 of the Agreement both Respondents are jointly and severally liable for all obligations under the Agreement;
- (iii) In terms of Clause 8 of the Agreement, the Respondents were obliged to pay a monthly rent of £1275 to the Applicant;
- (iv) No rent was paid in April 2021, accruing an arrear of £1275.
- (v) The First-Named Respondent removed from the Property on or around October 2019;
- (vi) The Agreement terminated in May 2021.

- Reasons for Decision

6. The Tribunal was satisfied that the Applicant was entitled to the sum as sought, with both Respondents being jointly and severally liable for same. The Respondents were obliged to make payment of rent in the sum of £1275 per month under Clause 8 of the Agreement and had failed to do so. One joint tenant cannot remove from a property and terminate their own interest in an ongoing joint tenancy. All joint tenants must agree to terminate a joint lease agreement and until that happens, all joint tenants remain jointly and severally liable for the obligations thereunder. Despite the First-Named Respondent removing from the Property on or around October 2019, she remained jointly and severally liable under the Agreement until it was brought to an end in May 2021 when the Second-Named Respondent signed up to a sole tenancy. Accordingly, both Respondents are jointly and severally liable for the rent which went unpaid in April 2021.

- Decision

7. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent(s) for payment of the undernoted sum to the Applicant(s):

Sum of ONE THOUSAND TWO HUNDRED AND SEVENTY-FIVE POUNDS
AND (£1,275) STERLING

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.

Fiona Watson

Legal Member/Chair

Date: 9 February 2021