



**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/21/0191**

**Re: Property at 24 Woodlands Place, Inverbervie, DD10 0SL (“the Property”)**

**Parties:**

**Mr Gordon McKay, 52 Muirfield Terrace, Gullane, East Lothian, EH31 2HW (“the Applicant”)**

**Miss Lana Davidson, 1 Mercury Place, St Cyrus, DD10 0AZ (“the Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member) and Gerard Darroch (Ordinary Member)**

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

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

A payment order in the sum of £1719.00 be made in favour of the Applicant and against the Respondent.

The decision of the Tribunal was unanimous.

**Background**

1. This is an application for a payment order under Rule 111 of the Tribunal rules of procedure which was first received by the Tribunal on 20th January 2021 and was accepted by the Tribunal on 25<sup>th</sup> February 2021.
2. A Case Management Discussion took place on 24<sup>th</sup> May 2021. At that stage the Respondent was not present or represented. The Applicant was represented by Mr Skea, property manager at T Duncan & Co solicitors. During that case

management discussion Mr Skea indicated that he had an address for the Respondent. Tribunal papers had been served by advertisement but given that an address had come to light the Tribunal took the view that it was not appropriate to proceed without intimation of the application at the new address for the Respondent. The Case Management Discussion was continued to 1 July 2021. The Tribunal issued a Direction in respect of certain matters raised in the Applicant's application.

3. At the Case Management Discussion on 1 July 2021 Mr Skea attended again on behalf of the Applicant. The Tribunal had received contact in advance of 1st July 2020 from a Mr Stephen, indicating that he would be representing the Respondent. Mr Stephen attended the case management discussion on 1st July but at that time the Tribunal was not satisfied that he had appropriate authorisation from the Respondent in order to represent her in relation to the application. The Case Management Discussion was further continued to allow Mr Stephen to submit an authorisation in order to represent the Respondent.
4. At the case management discussion which took place on 20<sup>th</sup> July 2021 Mr Skea was present again for the Applicant and Mr Stephen attended on behalf of the Respondent. Mr Stephen indicated that he had encountered difficulties in obtaining the papers which he needed in order to represent the Respondent. He did however indicate that he had sight of photographs of what he believed were the papers and was able to put forward the Respondent's position at the Case Management Discussion.
5. Mr Stephen's position on behalf of the Respondent was that the joint tenancy which had been lodged by the Applicant's representative had not been terminated as only one tenant had given notice to terminate the agreement. Mr Stephen's position was that there should be another party to the application and that party was also liable for any outstanding rent and costs. On behalf of the Respondent he indicated that the other tenant in the joint tenancy had indicated he would keep paying rent after he left the property but failed to do so. Mr Stephen indicated that he would have more to say on cleaning and removal costs but would do so after he had reviewed all of the papers.
6. The Applicant's position was that the joint tenancy which had been in place at the property had ended by the tenants terminating it and a new tenancy agreement had been agreed with the Respondent. Mr Skea indicated that such a tenancy agreement was on file but he could not produce a signed copy. It was his position that with or without a written tenancy agreement with the Respondent, she had agreed to a new tenancy on her own behalf after the joint tenant had vacated the property. As a result he explained that the Applicant's view was that the Respondent was liable for the full outstanding rent arrears and costs claimed in the payment order.
7. The Tribunal determined that a hearing should be fixed in order to resolve the issues between the parties. The main issue appeared to be whether the joint tenancy entered into by the Applicant, Respondent and another tenant had come to an end or whether it had continued and whether the other tenant in that agreement should be a party to the application. This was a matter which required to be determined in advance of dealing with the other issues which arose as to the amount of any liability for outstanding rent and costs on the part of the Respondent.
8. At the Case Management Discussion on 20<sup>th</sup> July 2021 the Tribunal Chair explained to both parties what would happen at a hearing. Mr Stephen indicated

that if matters proceeded to a hearing he would no longer represent the Respondent, but that she would be represented by a solicitor from a particular firm. He also indicated that he would have witnesses who would be called to support aspects of the Respondent's position. During the discussion Mr Stephen on behalf of the Respondent made an offer to the Applicant's representative Mr Skea in order to settle matters. Essentially he offered half of the sum being claimed ( £859.50) to be paid over a period of two years. He offered a monthly instalment of £35.81 which he said the Respondent would pay from her benefit payments. Mr Skea indicated that he would require to take instructions on the matter. In further discussion Mr Stephen indicated that he could offer two options in order to settle matters. He offered half of the sum being sought in the application payable over two years at the rate of £35.81 per month and indicated that the Respondent would consent to the Applicant seeking a payment order for that sum from the Tribunal. As an alternative he offered the same amount, half of the sum being requested, over the same period of time, payable by direct debit at the same rate per month and offered that he, Mr Stephen would act as guarantor in the context of any agreement that parties came to in relation to the matter. He indicated that the option with a guarantor in place would only be available if the Applicant agreed not to continue with the payment order application.

9. A hearing was fixed in relation to matters to take place on 17 September 2021 by audio teleconference. At that stage the parties were asked to advise the Tribunal if an agreement was reached in advance of the Hearing.
10. The Tribunal issued a further Direction to parties in advance of the hearing. This direction required both parties to set out their position on the issues raised and to lodge lists of witnesses and productions in advance of the hearing.
11. The Tribunal received representations and further productions from the Applicant's representative in advance of the hearing but received no documentation or contact of any kind from Mr Stephen on behalf of the Respondent.

## **12. The Hearing**

The Hearing on 17 September 2021 was attended by Mr Skea on behalf of the Applicant. There was no appearance by the Respondent or her representative Mr Stephen. The Tribunal Clerk telephoned a phone number which had previously been provided by Mr Stephen to the Tribunal. Whilst this number was ringing, an automated voice indicated that the caller was not able to access the number. No emails were received from Mr Stephen on the morning of the hearing and there was no contact of any kind from the Respondent or Mr Stephen her representative.

13. Mr Skea on behalf of the Applicant asked the Tribunal to proceed in the absence of the Respondent and her representative. He pointed to the history of the matter. He explained that he had entered into correspondence after the last Case Management Discussion with Mr Stephen, regarding his offer to settle matters. He indicated that they had reached a consensus on certain matters subject to a written agreement being put in place. Mr Skea indicated that he had asked who would prepare such an agreement in an email to Mr Stephen on

12<sup>th</sup> August 2021. He received no reply from Mr Stephen to that email and sent another email on 30<sup>th</sup> August chasing matters up but had had no further communication from Mr Stephen on the Respondent's behalf. He indicated that he felt that the Respondent had had every opportunity to put her position forward and whilst he had indicated a willingness on behalf of the Applicant to enter into an agreement to resolve matters, before an agreement could be finalised, contact had completely ceased. Mr Skea's position was that he wished to proceed and was looking for the full amount being requested in the payment order application given that attempts to settle matters had not been successful.

- 14.** The Tribunal carefully considered whether it was appropriate to proceed in the absence of the Respondent or her representative. The Tribunal was satisfied that the Respondent's representative had received appropriate notification of the hearing date and indeed an attempt to contact him was made on the morning of the hearing without success. There was no explanation for the failure to attend before the Tribunal and there had been no contact of any kind with the Tribunal by Mr Stephen or the Respondent since the case management discussion on 20<sup>th</sup> July. In all of the circumstances, given that notification had taken place to the Respondent representative, the history of the matter and the fact that the Respondent's position had been set out in the previous Case Management Discussion, the Tribunal felt it was appropriate having regard to the overriding objective to deal with matters fairly and avoiding delay so far as is compatible with proper consideration of the issues, that the hearing should proceed in the absence of the Respondent and her representative.
- 15.** At the Hearing the Tribunal had sight of the application, a joint tenancy agreement between the Applicant, the Respondent and another tenant, a number of emails between the Respondent and staff at T Duncan and Co, the named Letting Agent for the tenancies, a cash account in relation to the property, a quotation in respect of house and rubbish clearance and a receipt for payment for this cost, a quote for cleaning of the property and a receipt for payment of this cost. The Tribunal also had sight of emails in respect of rent arrears between the Respondent and the Applicant's representative Mr Skea, and a handwritten letter from Miss Davidson giving notice to give up the tenancy on a date in August 2020. The Tribunal also had sight of a tenancy agreement for the property dated 20 July 2020 between the Applicant and the Respondent but noted that this copy was unsigned. The Tribunal also had sight of a series of emails between the joint tenant on the first tenancy and T Duncan & Co giving notice to vacate the property on behalf of both that person and the Respondent and a letter from the same previous joint tenant setting out his position regarding utility readings, return of the deposit and other matters.
- 16.** Mr Skea set out the Applicant's position in relation to the payment order. The sum of £1424 was being sought in respect of unpaid rent at the property between July and October 2020. His position was that the Applicant and respondent had entered into a new tenancy agreement in which she was the sole tenant. The agreement around that tenancy had been discussed by a

member of staff at T Duncan & Co who no longer worked there and Mr Skea was unable to access her e mails. He had been able to produce an unsigned tenancy agreement dated 20<sup>th</sup> July 2020 and was able to advise the Tribunal that he was satisfied that the document would not have been generated and sent to the Respondent had she not agreed to enter into a new tenancy on her own account. He explained that the Respondent had stayed on in the property after the termination of the joint tenancy due to the breakup of her relationship with the former joint tenant. Her mother had made an initial payment of rent but after 20<sup>th</sup> July 2020, the date when the new tenancy for which there was a written agreement had begun, no rent was paid at all by the Respondent. He further explained that the notice given by the previous joint tenant indicated that it was a notice on behalf of both parties. Mr Skea had been furloughed at that time. He said he was satisfied from the information which had been able to access that the joint tenancy had been properly terminated and Miss Davidson had agreed to enter into a new tenancy with effect from 20 July 2020. She had been permitted to stay on at the property after the date of termination of the joint tenancy as she had not secured any other property and this was during the Covid 19 pandemic restrictions. She had accepted responsibility for the rent on the same terms as the joint tenancy and her mother had made a rental payment of £448.50 to cover the period from the end of the joint tenancy on 23 June 2020 and 19 July 2020. At no time after the notice to terminate the joint tenancy being sent was there any note or other evidence he could find to suggest that the Respondent had not agreed to the termination of the joint tenancy.

- 17.** He pointed to emails which he had lodged with the Tribunal dated 4th August 12th August and 17<sup>th</sup> August, all 2020 from the Respondent which appeared to suggest that she was aware of and acknowledged that unpaid rent was due by her in relation to the tenancy where she was the sole tenant.
- 18.** As far as the additional costs for house and rubbish clearance and cleaning were concerned Mr Skea explained that the house and rubbish clearance for which £100 was being sought was the cheapest option available to the Applicant at the time when the property was vacated by the Respondent. Items had been left in the property which had to be removed and rubbish also had to be cleared. The gentleman who carried out the work was retired and kept costs to a minimum in relation to the number of hours claimed and cost of recycling. As far as the costs for cleaning he confirmed that the cost claimed related to 7 hours at £25 per hour with £20 for materials. The Applicant had employed a small home repair firm to clean the house at the end of the tenancy and Mr Skea highlighted that this was a three-bedroom property and his position was that the costs being claimed were reasonable and reflected the work carried out.
- 19.** Mr Skea also pointed to the attempts made to recover the outstanding rent. It was clear that Miss Davidson was trying to be rehoused and was reliant on benefit and ultimately he had been unable to recover the outstanding sums from her.

- 20.** He further stated to the Tribunal that he was satisfied that all the information he been able to recover indicated that a new tenancy was in place at least from 20 July 2020 and a new rent account would have been set up in the office system in terms of their internal processes. The Tribunal did not have sight of a new rent account with effect from 20 July 2021.
- 21.** In summing up his position Mr Skea indicated he felt that the Applicant had been more than accommodating to the Respondent. He was aware that there was at least one child at the property during the tenancies. All the information he had put forward he said pointed to the position that the Applicant took, which was that the joint tenancy had terminated properly having been intimated on behalf of both parties by the lead tenant. The Respondent had stayed on until the end of that tenancy. She had wished to stay on further as she had not secured another property and her mother had made a rent payment on her behalf to cover a period after the joint tenancy ended and the new written one with the Respondent as the sole tenant was due to start. It was only when the new tenancy started on 20<sup>th</sup> July 2020 that rent arrears accrued. Mr Skea indicated that the costs for cleaning and housing rubbish clearance were appropriate claims having regard to the tenancy agreement.

### **Findings in Fact**

- 22.** The Applicant, Respondent and one other party as joint tenant entered into a tenancy agreement at the property with effect from 28th June 2019 with a monthly rent payable at the rate of £595. By email dated 25th May 2020 sent by the joint tenant to the Letting Agents for the property on behalf of both tenants, both the Respondent and the other tenant gave notice to terminate the initial joint tenancy agreement.
- 23.** The initial joint tenancy agreement ended on 22 June 2020.
- 24.** The Applicant was permitted to continue to stay at the property after 22<sup>nd</sup> June as she had no other property secured to live in during the period of the Covid 19 pandemic restrictions.
- 25.** The Respondent 's mother made a rental payment to cover the full rent due at the property to the Applicant's Letting Agent T Duncan & Co from 23<sup>rd</sup> June to 19 July 2020.
- 26.** The Respondent agreed to enter into a new private residential tenancy with the Applicant with a monthly rent of £595 with this agreement to start on 20 July 2020.
- 27.** No rent was paid by the Respondent from that period until she vacated the property and returned the keys on 2 October 2020.
- 28.** Rent arrears in respect of that tenancy agreement which commenced on 20<sup>th</sup> July 2020 amount to £1424.00.
- 29.** The Applicant incurred further costs in cleaning the property at the end of the Respondent's tenancy and removing items which were left inside and outside the property and these costs amounted to £295.

30. The Applicant's Letting Agent made efforts to recover the unpaid rent from the Respondent but these were unsuccessful.
31. Clause 17 of the private residential tenancy agreement requires a tenant to take reasonable care and keep a property clean and tidy. The Respondent breached this clause of the agreement during her tenancy at the property and the Applicant is entitled to seek to recover costs incurred as a result of this breach.
32. The sum of £1719 is lawfully due by the Respondent to the Applicant in relation to unpaid rent accrued during the Respondent's tenancy and costs incurred in cleaning and removing items from the property at the end of the tenancy.

### **Reasons for Decision**

33. The Tribunal was satisfied that the Respondent had entered into a private residential tenancy agreement with the Applicant on her own account after proper notice to terminate the original joint tenancy was given on behalf of both tenants to that agreement. Whilst the Applicant's representative was not in a position to provide full information, it was clear from the evidence that was provided that there was a sequence of events which were indicative of a new tenancy having been properly put in place. After the notice to terminate the joint tenancy was sent, the Respondent had no other accommodation and was permitted to stay at the property after the termination date of the joint tenancy. She appeared to accept full responsibility for the rent with effect from that date, her mother making a payment for rent at the same rate to cover the period up to 19 July 2020. It was clear from emails that the Respondent was trying to find other accommodation and that the tenancy was to be a short term tenancy arrangement but the Tribunal had sight of a letter dated 23<sup>rd</sup> June to the Respondent at the property enclosing a tenancy agreement with the start date of 20 July 2020. A signed copy was not before the Tribunal as the Applicant's representative did not have access to his former colleague's e mail to ascertain if it had been signed electronically. It was clear from subsequent emails in August 2020 that the Respondent accepted her liability to pay the outstanding rent arrears. In addition the Tribunal had sight of a letter received from the former joint tenant dated 22 June 2020. In that letter his position was that he said he understood that the Respondent had arranged a new tenancy with the Applicant. The Tribunal was therefore satisfied on the balance of probabilities that the evidence before it suggested that the joint tenancy had been terminated, a new private residential tenancy had been entered into although this may not have been subject to a signed written agreement. It was also apparent from the evidence that whatever the position with a new written tenancy agreement the Respondent had agreed to continue to lease the property on the same terms as before, taking responsibility for the same monthly rent of £595. The Tribunal carefully considered the position which had been set out by the Respondent's representative at the third case management discussion on 20<sup>th</sup> July 2021.

There was nothing in the evidence before the Tribunal at the hearing to support any suggestion that the initial joint tenancy continued or that the former joint tenant had agreed to assist with the rent after his departure from the property or to collect items of property from the property itself. The tribunal was also satisfied that in terms of a tenant's obligation to take reasonable care at the property, set out in clause 17 of the private residential tenancy agreement that it was appropriate for the Applicant to seek cleaning costs and those for removal of items from the home, all of which seemed reasonable sums.

### **Decision**

The Tribunal made a payment order against the Respondent and in favour of the Applicant in the sum of £1719.

### **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.**

**V. Bremner**

**17.9.21**

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**Legal Member/Chair**

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**Date**