



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under section 16 of the Housing (Scotland)
Act 2016**

Chamber Ref: FTS/HPC/CV/21/0697

Re: Property at 33 Dalkeith Road, Dundee, DD4 6JT (“the Property”)

Parties:

**IB Murray and Son on behalf of Mr and Mrs Horsfield, 87 Perth Road, Dundee,
DD1 4HZ (“the Applicant”)**

**Miss Demi-Leigh Hunt, residing at the Property and Mr Liam Phin, whereabouts
unknown (“the Respondent”)**

Tribunal Members:

Maurice O'Carroll (Legal Member) and Melanie Booth (Ordinary Member)

Decision (in the absence of the Respondents)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an Order for payment should be made in the sum of
£8,125 with interest at the contractual rate of 8% per annum running from the
date of the Order to follow this decision until payment.**

Background

1. A Hearing was held by telephone conference commencing at 10am on 4 June 2021. Reference is made to the background, hearing discussion and findings in fact under application reference FTS/HPC/EV/21/0696 which are not repeated in the present decision.
2. The application for civil recovery under the current reference was made on the same date as the application for recovery of possession noted above. The Tribunal considered the application for civil recovery after it had made a determination in the related application for recovery of possession of the Property. The same parties were present at the CMD as for the eviction proceedings.

Proceedings at the CMD

3. The original application sought payment of £6,875 as vouched by the schedule provided with the application.
4. On 17 May 2021, Messrs Baillie Shepherd made an application to amend the amount claimed in terms of rule 14A of the 2017 Tribunal rules to take account of further arrears which had occurred. That application was copied to the respondent as required by the rule. It came more than 14 days in advance of the hearing date. The Tribunal granted the application to amend. The sum sought at the CMD was £8,125, again as vouched by a schedule of rental payments which the Tribunal accepted.
5. The amount of rent arrears payable was not contested by Ms Menzies on behalf of Miss Hunt.
6. Mr Phin stated that he was aware that the debt in respect of rent arrears was incurred on a joint and several basis since he was a joint tenant with Miss Hunt under the rental agreement. He had left the Property in March 2020 after his relationship with Miss Hunt had broken down and had attempted to serve notice on the landlord to end the lease insofar as it applied to him. That had not been accepted by the landlord and no new lease in Miss Hunt's sole name had been produced.
7. This gives rise to an unfair situation whereby a departed tenant is jointly and severally liable for the non-payment of rent incurred by the remaining tenant. However, it is not possible for one joint tenant to renounce his entitlement to a joint tenancy and thereby leave the remaining tenant as sole tenant. Renunciation requires the agreement of the landlord and the tenant which was not obtained in this case.
8. The fact that one joint tenant is not present in the Property does not prevent that tenant from being liable for the non-performance of the tenants' obligations by the other tenant (*Sutherland v Robertson* (1736) Mor. 13979). This is the normal application of the law of leases in Scotland and, as is evident from the age of the authority cited in this paragraph, does not arise as a result of the creation of Private Residential Tenancies in 2016. That is what joint and several liability entails.
9. Therefore, despite the apparent unfairness, the Tribunal does not have the legal authority to differentiate the liable parties (such as by only naming Miss Hunt as the debtor) in the payment Order to follow upon this decision.

Findings in fact

10. The Respondent has not made any rental payments since 30 March 2020. The debt thereby accrued totalled £8,125 by the time of the hearing (that is, up until 29 April 2021) according to the vouching submitted to the Tribunal.
11. Clause 8 of the rental agreement provides for interest on unpaid rent to run at 8% per annum.

12. No substantive defence was lodged to the application for payment.

13. Both joint tenants as named respondents have joint and several liability for the debt incurred in respect of non-payment of rent.

Decision

14. Therefore, the Tribunal determined to grant an Order for Payment in the sum of £8,125 with interest thereon at the contractual rate of 8% per cent per annum by the Respondents to the Applicant.

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.

Maurice O'Carroll

4 June 2021

Legal Member/Chair

Date