



**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) Act 2016 (“the Act”)**

**Chamber Ref: FTS/HPC/CV/21/0876**

**Re: Property at 91 Balmore Drive, Hamilton, ML3 8DE (“the Property”)**

**Parties:**

**Rainy Day Business LTD, 10 Western Road, Romford, Essex, RM1 3JT (“the Applicant”)**

**Ms Carolyn Duffy, 51 Kirk Street, Strathaven, ML10 6LB (“the Respondent”)**

**Tribunal Members:**

**Petra Hennig-McFatridge (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order by the Respondent to the Applicant for the sum of £595 should be granted.**

**Background**

This is an application for payment of outstanding rent in terms of S 71 (1) of the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act) against the Respondent Ms Duffy as Guarantor.

The Applicant is seeking payment of arrears of rent as per the rent schedule attached to the application, which shows arrears of rent of £595 as at 1 May 2021. The Applicant had lodged the following documents in evidence: the Private Residential Tenancy Agreement including the Guarantee clause 38, the rent statement, a text exchange between the Applicant's representative and the Respondent in April 2021 and a letter from Smart Move to the Respondent dated 2 April 2021.

A Case Management Discussion (CMD) had been scheduled for 16 July 2021. The service on the Respondent was carried out by Sheriff Officers on 11 June 2021.

## **The Case Management Discussion**

The Applicant's representative Mr Reynolds and the Respondent participated in the CMD held by telephone conference on 16 July 2021.

Mr Reynolds advised that the tenant, who is the son of the Respondent, had now left the property and moved to London. Notification of the move appears to have been provided by the tenant to the Applicant on 23 June 2021 but there was also an email from the tenant dated 3 June 2021 in which he stated that he had moved to London a week prior to the email being sent.

Mr Reynolds stated that at least a further month rent at £395 was due in addition to the £595 narrated in the application but that the Applicant was content to limit the application amount to £595 and thus had not amended the application prior to the CMD. He further stated that payments of £20 on 16 June 2021 and of £200 on 14 June 2021 had been received but these had not reduced the arrears below the £595 claimed in the application. He further explained that the property was left in an untidy and damaged state and that the deposit of £395 currently held in a registered deposit scheme would be claimed for expenses to clean and repair damage left at the property.

Ms Duffy stated she did not have the money to pay the £595 but accepted that these arrears are still outstanding. She understands from her son that he will now pay the rent arrears over the next few weeks. She agreed that the deposit would be required to address the state the property was left in. She accepted that she is the Guarantor for the rent arrears and that there is no legal reason why the Tribunal should not issue a payment order at the CMD. However, she hopes that the arrears will be cleared by her son before the payment order is enforced.

## **Findings in Fact**

1. The Applicant and the Respondent's son entered into a Private Residential Tenancy Agreement for the property commencing on 2 September 2020. (Clause 6)
2. Rent of £395 per calendar month was payable in advance on the 2 day of the month (Cause 8).
3. As at the date of the CMD the amount of £595 rent arrears is still outstanding.
4. Ms Duffy signed the tenancy agreement as Guarantor for the tenant on 29 August 2020.
5. Ms Duffy as Guarantor is liable for payment of rent if the tenant defaults in rent payments (clause 38).

## **Reasons for decision**

In terms of Rule 18 of the Rules of Procedure the Tribunal is satisfied that it is not contrary to the interests of the parties to make a decision at the CMD and that the information available in document form and from the Applicant's Representative and the Respondent at the CMD allows sufficient findings to determine the case.

In terms of Clause 38 of the tenancy agreement the Respondent as Guarantor is liable for payment of rent not paid by the tenant for the tenancy between her son and the Applicant.

In terms of 71 of the Private Housing (Tenancies) (Scotland) Act 2016 : " First-tier Tribunal's jurisdiction: (1)In relation to civil proceedings arising from a private residential tenancy—(a)the First-tier Tribunal has whatever competence and jurisdiction a sheriff would have but for paragraph (b), (b)a sheriff does not have competence or jurisdiction. (2)For the purposes of subsection (1), civil proceedings are any proceedings other than—(a)the prosecution of a criminal offence, ( b)any proceedings related to such a prosecution."

The Tribunal is satisfied that the proceedings against Ms Duffy as Guarantor "arise from" the Private Residential Tenancy entered into between the Applicant and the Respondent's son.

Although some payments have been made by the tenant recently, these have not reduced the outstanding amount of rent below the amount of £595, which the application is restricted to. It is agreed between the parties that as of the date of the CMD the amount of £595 rent arrears remains outstanding.

The Tribunal grants the order of payment of the amount of £595 to the Applicant by the Respondent as rent lawfully due.

**Decision:**

**The Tribunal grants the order for payment of the amount of £595 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.**

**Petra Hennig McFtridge  
Legal Member/Chair**

**16 July 2021  
Date**