



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014**

**Chamber Ref: FTS/HPC/CV/21/2753**

**Re: Property at 8F Morgan Street, Dundee, DD4 6QF (“the Property”)**

**Parties:**

**Mr John Nicol, 8 Wallcetown Court, Dundee, DD4 6RP (“the Applicant”)**

**Mr Stevie Johnstone, A/2 2 Gardner Street, Dundee, DD3 6DU (“the Respondent”)**

**Tribunal Members:**

**Andrew Upton (Legal Member) and Elizabeth Williams (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent is liable to make payment to the Applicant in the sum of SIX THOUSAND SIX HUNDRED AND TEN POUNDS AND FIFTY THREE PENCE (£6,610.53) STERLING**

**FINDINGS IN FACT**

1. The Applicant was the landlord, and the Respondent the tenant, of the Property under and in terms of a series of tenancy agreements between 2013 and 2021.
2. The Respondent was under obligation to pay rent to the Applicant.
3. The Respondent was, during the period 9 December 2019 until termination of the tenancy agreement, entitled to housing benefit.
4. During the period 9 December 2019 until 27 July 2020, the Applicant received payment of the Respondent’s housing benefit directly.
5. In or around July 2020, the Respondent switched his benefits to universal credit.
6. As a consequence of the switch to universal credit, the direct payment of the Respondent’s housing benefit to the Applicant stopped.

7. During the period 22 June 2020 until 11 October 2020, the Respondent received payment of universal credit that included payment of housing costs.
8. During the period 22 June 2020 until 11 October 2020, the Respondent failed to pay rent.
9. The Respondent lied to the Applicant by telling him that he would receive direct payments of housing element when, in fact, he knew that the housing element had been paid to the Respondent.
10. The Respondent lied to universal credit administrators by saying that he had paid his housing element of universal credit to the Applicant.
11. During the period 12 October 2020 until 7 May 2021, the Applicant received seven direct payments of a contribution towards the Respondent's housing costs from universal credit in the sum of £300 per payment.
12. In or around May 2021, the Respondent sent a TikTok video to the Applicant in which various common claims against private rented sector landlords were discussed.
13. In or around May 2021, the Respondent told universal credit administrators that he had no housing costs, which resulted in the payment of housing element stopping.
14. On 2 June 2021, the parties met to discuss potential settlement of a dispute between them. The meeting took place at Dundee Contemporary Arts Centre and was attended by the Applicant, the Respondent, Neil Dymock, Rose Harkin and Morgan Robbins.
15. At the date of the meeting, the Respondent was in rent arrears of £4,302.93.
16. At the said meeting, it was ostensibly agreed that:-
  - a. the parties would execute a new Private Residential Tenancy Agreement;
  - b. the Applicant would release the tenancy deposit of £461.52 to the Respondent after the Respondent moved out of the Property;
  - c. the Respondent would give Notice to Leave to the Applicant;
  - d. the Respondent would move out of the Property;
  - e. the Respondent would reinstate the direct payments of housing element until the end of the tenancy; and
  - f. the Applicant would provide a reference for the Respondent in favourable terms to allow him to find alternative housing.
17. The parties did not discuss the Respondent's rent arrears at the meeting.
18. The parties did not agree prior to the meeting that any agreement reached at the meeting would be in full and final settlement of any and all disputes.
19. The Applicant did not understand that the rent arrears were included in the agreement.
20. The Respondent believed that the agreement reached at the meeting was in full and final settlement of any and all disputes, including the rent arrears.
21. Following the meeting, the parties entered into a new Private Residential Tenancy Agreement dated 28 and 29 June 2021.
22. Following the meeting, the Respondent failed to reinstate the direct payments of housing element.
23. The Respondent removed from the Property on or around 7 November 2021.
24. In total, the Respondent failed to make payment to the Applicant in the sum of £6,610.53.

## **FINDINGS IN FACT AND LAW**

1. There being no consensus in idem between the parties as to whether the agreement ostensibly reached by them on 2 June 2021 was in full and final settlement of any and all claims, and that being an essential term of the agreement, there was no agreement between the parties.
2. The Respondent is under contractual obligation to make payment to the Applicant in the sum of £6,610.53.

## **STATEMENT OF REASONS**

1. This Application called for its Hearing by teleconference on 19 April 2022. Both parties were present on the call.
2. In this Application, the Applicant seeks payment of the sum of £6,610.53. The Applicant contends that this sum represents arrears of rent owed to him by the Respondent.
3. This Application previously called for Case Management Discussions on 19 January 2022 and 21 February 2022. Across those two discussions, it was established that:-
  - a. The Applicant was the landlord, and the Respondent the tenant, of the Property under and in terms of a series of tenancy agreements between 2013 and 2021.
  - b. The Respondent was under obligation to pay rent to the Applicant.
  - c. The Respondent failed to make payment to the Applicant in the sum of £6,610.53.
  - d. In June 2021, the parties met to discuss potential settlement of a dispute between them.
  - e. At the said meeting, it was agreed that the parties would execute a new Private Residential Tenancy Agreement, that the Respondent would give Notice to Leave to the Applicant, and the Applicant would provide a reference for the Respondent in favourable terms to allow him to find alternative housing.
4. The crux of the dispute is what was allegedly agreed by the parties at the said meeting in June 2021. The Respondent's position was that the agreement reached was in full and final settlement of all matters, including the arrears, and the Applicant is therefore contractually barred from pursuing the arrears. The Applicant's position was that the agreement did not have any effect on the arrears and, in any event, even if it did (which was denied) the Respondent had failed to meet his obligations under the Agreement and was therefore in breach of it. Accordingly, the Applicant's fall-back position was that the Respondent was not entitled to rely upon the agreement as a basis for non-payment of arrears.
5. At the Hearing, the Tribunal heard evidence from each of the parties, as well as from Neil Dymock, Rose Harkins and Morgan Robbins. Given that neither

party was legally trained, the Tribunal directed much of the examination. Given the matters which were agreed between the parties, the scope of the evidence led was principally directed at (i) the accrual of the arrears, (ii) the meeting in June 2021, and (iii) the actions of the parties following that meeting.

## Evidence

### *John Nicol*

6. The Applicant gave evidence first. He is 62 and had recently retired. He said that he was previously a project manager for a telecommunications company.
7. The Applicant spoke to how he said the arrears had accrued. He spoke to the rent schedule produced by him with the Application. He said that the Respondent had been entitled to claim housing benefit, and that the housing benefit had been paid directly to him. However, in July 2020, payments stopped. He contacted the Respondent in August 2020 to discuss the missing payments, and was told that this was due to a change of procedure regarding his benefits. As he was now in receipt of universal credit, the Respondent said that the system was being updated and the contribution towards rent had been delayed. The Respondent assured the Applicant that the rent would follow. The following month there was still no payment. Again, the Applicant contacted the Respondent and, again, was advised that the payment would follow.
8. The Applicant then contacted the Universal Credit office. He was told that payments of the housing element had been paid directly to the Respondent since July 2020. The Applicant advised that the Respondent had not paid this on, and the individual from the Universal Credit office ended the call to make enquiries. The Applicant then received a call back and was told that the Respondent had said that he had paid the housing element to the Applicant. The Applicant confirmed that this was not true, and the Universal Credit people sought evidence of payment from the Respondent. Of course, none was produced because no payment had been made.
9. The direct payments of housing element to the Applicant were reinstated in or around November 2020, and continued until in or around May 2020. The Applicant spoke to the rent schedule showing the sums falling due, the payments received and when they were received.
10. In or around Spring 2020, the Respondent sent the Applicant TikTok videos describing how tenants can get money out of their landlords. The Respondent demanded payment of £2,000 to leave the Property. The Respondent threatened that he would stop the rent payments if the Applicant did not pay. The Applicant did not pay. The direct payments of housing element then stopped. The Applicant said that he made his own enquiries, and was told that the Respondent had contacted the benefits office to say that he no longer had any housing costs. As a result, the direct payments stopped.

11. The Applicant spoke to wanting to resolve the dispute and re-establish rent payments. As such, he suggested to the Respondent that they meet to discuss matters with a view to sorting it out. When the Respondent agreed, the Applicant approached Neil Dymock for assistance. Mr Dymock was a friend of a friend. He was a letting agent, with experience of dealing with these matters. The Applicant asked him to attend the meeting to keep things formal and legally correct. Mr Dymock agreed to attend.
12. A meeting took place on 2 June 2021 at Dundee Contemporary Arts Centre ("DCAC"). DCAC had bar and conference facilities. The meeting took place outside around a table. There were five people in attendance: the Applicant, the Respondent, Mr Dymock, the Respondent's mother and a friend of the Respondent. The Applicant described the meeting as having gone well. He felt that an agreement was reached. The Applicant agreed to give the Respondent £461.52 to leave. That was effectively the tenancy deposit, and it was held by Safe Deposit Scotland. The Applicant also agreed to provide supportive references to help the Respondent find alternative accommodation. The parties also agreed that a new tenancy agreement would be signed. The Respondent agreed to give Notice to Leave, and to reinstate the housing element direct payments. There was no discussion of the rent arrears, and no agreement that they would be written off. Following the meeting, Mr Dymock wrote to the parties by email with a summary of the points agreed by them. A copy of that email is produced. The summary makes no reference to the rent arrears.
13. Following the meeting, the parties digitally signed a new Private Residential Tenancy agreement. The Respondent then made an immediate application to Safe Deposit Scotland to recover the deposit. The Respondent did not issue a Notice to Leave. The Respondent did not reinstate the housing element direct payments.
14. In or around October 2021, the Applicant received a letter from the local authority about council tax. When the Applicant responded to the local authority to say that the Respondent was still living in the Property, the local authority advised that they had reason to believe that the Respondent was living elsewhere. On that basis, the Applicant served a Notice to Leave under the abandonment ground. The Respondent finally moved out of the Property properly in November 2021.

*Neil Clark Dymock*

15. Mr Dymock said that he is 37 years old and works as a letting agent. He described himself as a friend of a friend of the Applicant. He is not now, nor has he ever been, instructed by the Applicant as a letting agent.
16. Mr Dymock confirmed that the Applicant had approached him to help mediate a dispute with the Respondent. He was to attend as an impartial but knowledgeable person. He wanted to be fair, and was not there to broker an

advantage for the Applicant. He was to attend the meeting to broker a fair agreement.

17. Mr Dymock confirmed that he attended the meeting at the DCAC on 2 June 2021, and spoke to his email summary of what was agreed. He confirmed that he believed that his email summary was a fair reflection of the meeting. Neither party had replied to him to challenge the summary. Following the meeting, he helped to prepare and issue the new Private Residential Tenancy agreement for electronic signature via an application called "Signable". He recalled that the Respondent took issue with having to sign the agreement electronically.
18. To the best of Mr Dymock's recollection, there was no discussion of the rent arrears at the meeting, nor any agreement to write off the arrears. He could not recall any discussion about the content of the proposed reference either.
19. Mr Dymock had been separately asked by the Applicant about the Respondent's tenancy deposit. As he understood it, a tenancy deposit had been paid by the Respondent to the Applicant's former letting agent. That letting agent had since gone bust, and had not paid the deposit into an approved tenancy deposit scheme. Mr Dymock's recommendation to the Applicant was that the Applicant pay a fresh deposit to Safe Deposit Scotland, which he did. The agreement in June 2021 involved the Applicant releasing that deposit to the Respondent after the Respondent removed from the Property, as set out in the email summary of the agreement.

*Stevie Johnstone*

20. The Respondent is 27 years old and is currently unemployed. He confirmed that his housing benefit had traditionally been paid directly to the Applicant, but that this stopped when he moved over to universal credit. He confirmed that the Applicant had called him to discuss the missing payments and that he had given the Applicant assurances that the rent would be paid. The Respondent also accepted that he had received £900 from universal credit towards his housing costs and that he had not paid these to the Applicant. He also accepted that he had given inaccurate information to the local authority about what he had done with those housing cost payments.
21. The Respondent accepted that he had sent a TikTok video to the Applicant. He said that the video dealt with several topics, including the need for an electrical safety certificate and the tenancy deposit scheme regulations. The purpose of doing so was that the Respondent felt that the Applicant was in breach of various legislative requirements, and he wanted to bring that to the Applicant's attention. The Respondent spoke to feeling like he was not being listened to. He denied having demanded payment of £2,000.
22. The Respondent spoke to contacting universal credit to say that he was not having a good time in the house due to things not being done that should have been done. According to the Respondent, this caused universal credit to

suspend payment of the housing element of his costs. He said that the legislation phrased it as he did not have any housing costs, and accepted that he had confirmed that to universal credit. He did not take separate advice on this. The Respondent confirmed that he had not contacted universal credit to advise that the withheld payments should now be paid to the Applicant.

23. The Respondent was asked about his failure to pay the shortfall between his rent and the housing element of his benefits. The Respondent appeared unaware of the shortfall or that he was personally responsible to pay it. He maintained that his rent was paid from benefits.
24. The Respondent spoke to his view of the June 2021 meeting. His view is that the purpose of the meeting was to sort everything out, but that it was not a "formal meeting". His explanation for that was that he and his friend, Morgan Robbins, were drinking alcohol. The Respondent was unable to provide an explanation for how the characterisation of the meeting as formal or informal had a bearing on his position.
25. The Respondent understood the agreement reached was what might be referred to as "full and final settlement". It was in relation to all matters. He agreed to give a Notice to Leave once he had secured alternative accommodation. He claimed to have done so on 16 October 2021, but no copy was produced. He accepted that he had not contacted universal credit to reinstate the direct payments. His position was that the tenancy deposit was to be released immediately so that he would have funds to pay a new deposit.

*Rose Patricia Harkins*

26. Ms Harkins is the Respondent's mother. She is 64 years old and currently unemployed. She is a former tenant of the Applicant. He previously lived in the Property. The Respondent then became a joint tenant of the Property with her, and he then became the sole tenant when she moved out.
27. Ms Harkins asserted that the Applicant would not correspond with the Respondent for weeks when issues were raised. She said that she would repeatedly need to get involved to resolve matters. She felt that this was due to the Applicant taking advantage of the Respondent due to the Respondent's autism. Ms Harkins stated that she is the one who arranged the June 2021 meeting.
28. Ms Harkins advised that there had been a previous meeting between the parties in March or April 2021, the purpose of which was to resolve communication issues. She also said that the Applicant had agreed at that meeting to write off the Respondent's arrears, and to find the missing tenancy deposit.
29. With regards to the June 2021 meeting, Ms Harkins advised that there was no agreement that the Respondent would issue a Notice to Leave or that he would remove on or before 15 July 2021. She said that those matters were

not discussed. Whilst the Respondent agreed to sign a new tenancy agreement, it was agreed that this happen in person rather than electronically. She also said that the tenancy deposit was to be paid to the Respondent immediately following the meeting.

30. It is worth noting that Ms Harkins was hostile towards the Tribunal whilst giving her evidence. She was rude and demonstrated an unexplained disrespect for the Tribunal members during her questioning.

### *Morgan Robbins*

31. Miss Robbins is 23 years old and works as a Learning and Care Assistant at Kings Park School. She is a friend and flatmate of the Respondent. She has known the Respondent for three or four years, having met each other at a show they both attended.
32. Miss Robbins spoke of having lived at the Property from time to time to help the Respondent with his care needs. Miss Robbins confirmed that she attended the meeting in June 2021. She felt that Mr Dymock's email summary was a reasonably fair reflection of the discussion, but commented that the tenancy agreement was to be done in person. She felt the need to comment that the Applicant goes back on his word frequently. She referenced a need for a boiler repair as an example, saying that it had taken five months to deal with. She recalled having helped the Respondent with his care at the time, and that the cold had caused him a lot of pain.

### Assessment

33. The Tribunal found the Applicant and Mr Dymock to both be credible and reliable in their accounts. They gave their evidence in a straight forward manner. They did not give the impression that they were seeking to conceal any matter. The Tribunal accepted their evidence in full.
34. The Tribunal also found Miss Robbins to be generally credible and reliable. However, much of what she spoke about appeared to be based on what she had been told by the Respondent rather than from her own dealings. She was also somewhat uncertain in her recollection of the specifics of the June 2021. Accordingly, where her evidence diverged from that of the Applicant or Mr Dymock, the Tribunal preferred their evidence.
35. The Tribunal also formed the view that the Respondent was, for the most part, credible and reliable. However, much of what the Respondent said was either (i) agreeing with the Applicant, or (ii) stating his perception of matters. Against that background, the Tribunal is prepared to accept that the Respondent truly believed that the Applicant was in breach of his obligations, that he felt not listened to, and that he was somewhat confused as to his rights and obligations under the tenancy agreement. However, his description of his dealings with universal credit made little sense to the Tribunal. It seemed



objectively unlikely that the universal credit office would recommend that the Respondent stop paying rent to the Applicant, or that it would encourage him to state that he had no housing costs. The Tribunal found his explanation of those matters to be wholly incredible and unreliable.

36. By contrast, the Tribunal did not find Ms Harkins to be credible or reliable. Ms Harkins belligerence towards the Tribunal was a marked feature of her evidence. Whenever a question was put to her to test her evidence, Ms Harkins became angrier and more abusive towards the Tribunal. The Tribunal formed the impression that she was more focused on saying something to help her son and attack the Applicant than she was on telling the truth.

### Discussion

37. As set out earlier, the decision in this case largely rests on what was agreed at the meeting in June 2021. Given the Tribunal's assessment of the evidence, it is clear that the issue of the rent arrears was simply not discussed. The summary prepared by Mr Dymock makes no reference of any rent arrears, or of any agreement to write them off. The question for the Tribunal to determine is what that means.
38. The Applicant contends that the rent arrears did not form part of the discussion, and are not therefore part of the agreement reached at the meeting. The Respondent contends that the purpose of the meeting was to reach a settlement of all matters, and that whether expressly discussed or not, the rent arrears formed part of the dispute and the agreement includes them.

### *Post-June 2021 Rent*

39. The first thing to note is that the Applicant seeks payment of £6,610.52. Of that, only £4,302.93 had fallen due by the meeting on 2 June 2021. The parties appear to be agreed that the Respondent was to reinstate the direct payments of housing element to the Applicant following the meeting. The parties accept that a new tenancy agreement, which included the obligation to pay rent, would be entered into following the meeting, and that was in fact entered into. It follows that the parties intended that rent would be paid by the Respondent to the Applicant following the meeting on 2 June 2021. Accordingly, the Tribunal is satisfied that the balance of rent arrears claimed, being the sum of £2,307.59 is due by the Respondent to the Applicant.

### *Consensus in idem*

40. In respect of the arrears of £4,302.93, the question for the Tribunal is whether the agreement reached on 2 June 2021 was in full and final settlement of all matters. From the evidence accepted by the Tribunal, it does not appear that the agreement was described at the meeting as a full and final settlement of all matters. There is no suggestion that the arrears were to be written off. The Tribunal is satisfied that if either of those matters were discussed or agreed

on 2 June 2021, then they would have been set out in the summary prepared by Mr Dymock.

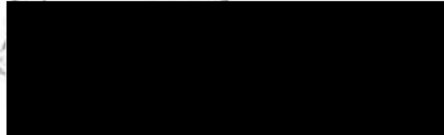
41. Therefore, the only way in which it could have been said that the meeting was on a full and final settlement basis would be if the parties agreed when making the meeting that this was the basis of the meeting. There was no evidence led that any such discussion took place. From the evidence heard, the Tribunal accepts that the Applicant did not understand the meeting to be taking place on such a basis, and that the Respondent did believe the meeting to be taking place on that basis.
42. It is a fundamental requirement of a contract that there be *consensus in idem*, which is to say a meeting of the minds, as to the essentials of that contract. Absent such consensus, there can be no agreement. Put shortly, one party believes the agreement to be one thing, and the other party believes it to be the other. In this case, the Tribunal is satisfied that what appears to be a contract settling certain disputes was reached at the meeting on 2 June 2021. However, there was an essential part of the contract that was not discussed – what disputes were being settled?
43. In *Mathieson Gee (Ayrshire) Limited v Quigley*, 1952 S.C. (H.L.) 38, the court was presented with what was described by the parties as an agreement. On appeal, and having reflected on the terms of the letters said to form the contract, the Inner House determined that there was in fact no contract. At page 43, Lord Reid stated:-  
  
*“It is necessary, therefore, to consider whether it is open to a Court to decide that there was no consensus in idem and therefore no contract when neither party has any plea to that effect. In my opinion, it must be open to a Court so to decide. No doubt, if an agreement could be spelling out from the documents, the Court in such circumstances would be inclined to do that and proceed to determine what were its terms. But, if it clearly appears to the Court that the true construction of the documents is such as to show that there was no agreement, then it is plainly an impossible task for the Court to find the terms of an agreement which never existed.”*
44. Having considered matters, it is the Tribunal’s view that there was no consensus in idem between the parties. The agreement reached on 2 June 2021 was predicated for the Applicant on rent arrears being separately considered, and for the Respondent on them being wrapped up in this agreement. They were not discussing the same thing. They were not on the same page. There could be no agreement between them.
45. For that reason, the Tribunal finds that there was no agreement to write off the rent arrears then due. The Respondent is therefore liable to make payment to the Applicant in the additional sum of £4,302.93.
46. For completeness, even if the Tribunal were wrong to hold that there was no consensus in idem and therefore no contract, the Tribunal’s conclusions

regarding the evidence would have been that the rent arrears were not discussed and did not form part of the agreement. Accordingly, the Respondent would have been liable to the Applicant regardless.

47. The Tribunal therefore finds the Respondent liable to make payment to the Applicant in the total sum of £6,610.52.

### **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.**



**Legal Member: Mr Andrew Upton**

**Date: 19/04/2022**