



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/CV/22/0341

Re: Property at 55 Fairview Crescent, Danestone, Aberdeen, AB22 8ZB (“the Property”)

Parties:

Mrs Bethany Milne, 4 South Ythsie Cottage, Tarves, Ellon, AB41 7LS (“the Applicant”)

Ms Selina Smith, 26 Glentanar Crescent, Dyce, Aberdeen, AB21 7LZ; Ms Emma Parley, 3 Grampian Gardens, Dyce, Aberdeen, AB21 7LF (“the Respondents”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment in the sum of £1174.01 should be granted against the Respondents in favour of the Applicant.

Background

1. The Applicant seeks an order for payment in terms of Section 71 of the 2016 Act in relation to unpaid rent. A copy of a private residential tenancy agreement and a rent statement were lodged in support of the application.
2. The application was served on the Respondents by Sheriff Officer on 19 April 2022. All parties were notified that a Case Management Discussion (“CMD”) would take place on 26 May 2022 at 2pm by telephone conference call and that they were required to participate. The CMD took place at 2pm on 26 May 2022. The Applicant and Second Respondent participated. The First Respondent did not participate and was not represented.

3. Mrs Milne advised the Legal Member that she has had no contact with Ms Smith, the former tenant of the property, and no payments had been made to the arrears of £1174.01. She said that the whole deposit paid by Ms Smith was retained to cover the cost of re-instating the property due to damage caused by Ms Smith during the tenancy. The tenancy ended on 19 April 2021. She confirmed that she is seeking a payment order against Ms Smith and Ms Parley, the guarantor.
4. Ms Parley advised the Legal Member that Mr Smith had taken advantage of her when her mental health was poor and got her to sign stuff. However, she told Ms Smith that she was not able to be a guarantor because she has debts and has signed a trust deed. In response to questions about the tenancy agreement lodged Ms Parley said that she could not recall receiving the document or signing it electronically. She said that the signature on the document is not her signature although the email address specified at the end of the document is her email address. She told the Legal Member that she did not provide the Applicant or her agent with proof of identity or other documents usually required if you are going to be a guarantor. She disputes that she is liable for the arrears. She also said that she has had no contact with Ms Smith for several years and is not able to dispute that the sum of £1174.01 is unpaid. Ms Parley advised the Legal Member that she had tried to obtain advice from the CAB in advance of the CMD but had been unsuccessful. She confirmed that she still wanted to obtain advice and the Legal member noted that she would do this as soon as possible.
5. Mrs Milne advised the Legal Member that the signing of the tenancy agreement had been dealt with by her letting agent and she could not provide information about how and when the document was signed. She confirmed that information or evidence from the letting agent could be provided.
6. The Legal Member determined that the application should proceed to a hearing. It was noted that the Second Respondent does not dispute the level of the arrears or that these are owed by the First Respondent. The only issue to be determined were whether the Second Respondent signed the tenancy agreement as guarantor and is therefore jointly liable for the unpaid rent.
7. The parties were notified that a hearing would take place by telephone conference call on 15 August 2022 at 10am. The hearing took place on this date. The Applicant and Second Respondent participated.

The Hearing

The Applicant's evidence

8. Mrs Milne told the Tribunal that she purchased the property in 2014 and lived there until March 2020. It became a rental at that point and Ms Smith was the first tenant. It is her only rented property and is fully managed by Winchester lettings Ltd. She did the viewing of the property with Ms Smith and then passed the matter to Gareth Winchester. She understands that they carried out the standard checks into affordability etc and, on their advice, she confirmed that a guarantor should be obtained. If the tenant had not provided a guarantor, the property would not have been let to her. The letting agents arranged everything and she was provided with a copy of the agreement with the name of the guarantor. She did not have any contact with Ms Parley. She did have some initial contact with the tenant who had some questions about the property when she moved in. However, when issues with the rent started, she stopped all direct contact and let the letting agent deal with it. Mr Winchester notified her that Ms Smith said that she had lost her job and asked to pay half rent for a month or so and would catch up later. She agreed to this, but the payments became erratic and then stopped. The tenant then moved out.

Evidence of Gareth Winchester

9. Mr Winchester told the Tribunal that he cannot recall all the specific details about this tenancy as his company manage over 700 properties. However, the same process is used for all managed properties. An email would have been sent to Ms Smith with link to a form for completion and she would have been asked to provide proof of ID, bank statements and proof of income if this information was not clear from the bank statements. An affordability assessment would then have been carried out. At this stage a decision is made about whether a guarantor is required. For students its automatic but for people who are working, they assess affordability. The prospective tenant is then asked to provide a guarantor and the same checks are carried out – id, proof of address and bank statements. In response to questions from the Tribunal, Mr Winchester said that sometimes the guarantor provides these documents and sometimes it is the prospective tenant. He does not know what happened in this case. However, the guarantor is only be accepted once the documents are provided. As a result of GDPR they do not hold onto the documents. Once the lease is signed, the email with the copy documents is deleted. If the documents are brought into the office, they are checked and returned while the person waits. Thereafter, the tenant and guarantor are sent a series of emails with a copy of the lease and some guidance about it being a legal document. Mr Winchester was referred to the copy tenancy agreement lodged with the application. He confirmed that “signable” software was used for the signing of the document. He referred to the schedule at the back of the document which shows it was sent to Ms Parley’s email address on 1st June. She signed it and sent it back. It was then sent to Ms Smith for signature, and he signed it last on 2 June 2020 for the landlord. When asked about how the document is signed, he said that the person can use their finger or a pen on the screen or can just type their name in the box and the software applies a font. Once it is signed by all a copy of the document is then sent to all the signatories by email. Mr Winchester said that he does not know if Ms Parley ever came to the office or called. There are too many calls to log them all. The Tribunal referred Mr Winchester to an email sent to him by Ms Parley on 16 July 2021 which states

that she could not be a guarantor because she has a trust deed. He said that he recalled that she claimed to have no knowledge of being a guarantor. However, they had followed the signable process and the agreement had been sent to and returned from her email address. Mr Winchester advised the Tribunal that his company now uses a company to do the pre tenancy checks but in 2020 they did them in house. In response to questions about the signatures on the agreement he said that it is a digital signature. His signature on the agreement is completely different from his actual signature as he just types his name, and the software applies the font. This is allowed by the legislation and its verified by going to and from the person's email address. In response to questions from Ms Parley Mr Winchester said that he does not recall the assessment of affordability in her case but the usual checks such as ID, address, bank statements and income will have been carried out. He does not recall whether the issue of the trust deed was ever mentioned but thinks not as he would probably have taken advice from his father, a retired solicitor, as he doesn't know whether these cause an issue. However, they have to be mindful of the Equality Act and other legislation which means that they cannot discriminate against people

The Respondent's evidence

10. Ms Parley told the Tribunal that she and Ms Smith had been friends from 2018 when they worked together. However, they had fallen out in 2019. There had been no contact for a while but in April 2020 they exchanged messages and spoke on the phone about the possibility of her being a guarantor. She had refused because she had signed a Trust Deed and had debts. The Tribunal asked Ms Parley to explain what she meant at the CMD when she said Ms Smith had got her to sign stuff. She said that Ms Smith had got to her and abused the position when her mental health was poor. She had signed something but cannot recall what it was. However, it could not have been the tenancy agreement as the signature on it is nothing like her signature. She confirmed that the email address listed at the end of the document is her email. She stated that Ms Smith knew her email address because of work. Ms Smith sent her some work documents to this address when she started, as she did not have a work email address. Ms Smith could have accessed the email address. Her email was hacked around that time, and she had to change all her passwords. She does not know if it was Ms Smith who did that. Ms Parley said that the signature cannot be hers as it is completely different. The letters are formed differently. She can't check back to see if she got emails about the tenancy because she has a new phone, and everything was deleted. She has had no contact with Ms Smith since April 2020. She signed the trust deed in 2018. The associated paperwork and the man who came to her workplace for her to sign the document stated that she could not be a guarantor because of her level of debt. In response to questions from Mrs Milne she said that she did not have a laptop at the relevant time, only a phone.
11. Ms Parley concluded her evidence by saying that she had been unable to get legal advice because everywhere was too busy. She thought that she had sent in examples of her signature. She had sympathy with the Applicant but would

not have signed anything because she was not able to do so.

Findings in Fact

12. The Applicant is the owner and landlord of the property.
13. The First Respondent was the tenant of the property in terms of a private residential tenancy agreement.
14. The First Respondent was due to pay rent at the rate of £450 per month.
15. The tenancy ended in April 2021 when the First Respondent vacated the property.
16. The sum of £1174.01 in unpaid rent was outstanding at the end of the tenancy.
17. The Second Respondent was the guarantor for the tenancy and signed the tenancy agreement on 1 June 2020.

Reasons for Decision

18. The First Respondent did not participate in either the CMD or hearing and did not lodge written representations. The Second Respondent was unable to comment on the rent account and did not dispute that the sum of £1174 was owed when the tenancy came to an end. The Tribunal is satisfied from the information provided by the Applicant, that this sum remains outstanding, and that the Applicant is entitled to a payment order. The only issue to be determined is whether the order should be against both Respondents or if only the former tenant is liable.
19. The Tribunal found Mrs Milne and Mr Winchester to be credible and reliable. Mrs Milne indicated that, on the advice of the letting agent, she insisted on a guarantor being obtained. This is a common arrangement. Mr Winchester could not recall the details of the tenancy. This is understandable given the passage of time and the number of properties that he manages. However, the Tribunal is satisfied that he would not have proceeded with the signing of the tenancy agreement unless and until he had been provided with the usual pre tenancy documents to check the identity of the guarantor and her financial status. This means that one of the Respondents must have provided him with these documents and Ms Parley's email address. The letting agent uses signable software for the signing of the tenancy. This provides a record of the document being sent to and signed by the parties including the date, time, and email address. This is a valid method of signature, and all parties are entitled to rely on it.

20 The Tribunal did not find Ms Parley to be entirely credible and reliable. She told the Tribunal at both the CMD and hearing that Ms Smith had got her to “sign stuff”, taking advantage of a low point in her mental health. However, although she can recall several messages and phone calls relating to the guarantor issue around that time, she states that she cannot recall what she signed. Her reasons for stating that it could not be the tenancy agreement are that her signature does not look like the one on the document and she would not have agreed to be a guarantor because of her trust deed. She had intended to submit examples of her signature in advance of the hearing to demonstrate how different it is from the document. However, this would not necessarily have established that she didn’t sign the tenancy. A digital signature can be applied in a number of ways and will not always resemble a person’s usual wet signature. Mr Winchester’s signature on the agreement was applied by the software when he typed his name in the relevant box. Furthermore, people often write their names in different ways at different times and only expert evidence from a handwriting expert could definitively establish if a person did or did not write a word, and then possibly only when comparing wet signatures. The Tribunal is therefore satisfied, on the balance of probabilities, that the document which Ms Parley signed was the tenancy agreement. She may have been reluctant to do so, but the document was sent to her email address, signed, and returned to the letting agent. It also seems likely that she provided the letting agent with the pre tenancy documents or allowed Ms Smith to do so. She offered no explanation for how these could have been provided without her knowledge, particularly since she claims that she was no longer in contact with the First Respondent at the relevant time.

20. The Tribunal is therefore satisfied that, however reluctantly, the Second Respondent signed tenancy agreement as guarantor and is therefore jointly liable for the rent arrears which are owing.

Decision

21. The Tribunal determines that a payment order should be granted against both Respondents for the sum of £1174.01

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.



Josephine Bonnar, Legal Member

15 August 2022