



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 70(1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/20/2072**

**Re: Property at 83 Sound of Kintyre, Machrihanish, Campbeltown, PA28 6GA (“the Property”)**

**Parties:**

**Mr Stephen McEwan, 12 Broomhall Road, South Croydon, Surrey, CR2 0PX (“the Applicant”)**

**Mr David Brown, Ms Pauline Connelly aka Hunter, 16 Sound of Kintyre, Campbeltown, PA28 6GA; 83 Sound of Kintyre, Machrihanish, Campbeltown, PA28 6GA (“the Respondent”)**

**Tribunal Members:**

**Ruth O’Hare (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order in the sum of Four thousand one hundred and twenty seven pounds and ten pence (£4127.10) Sterling**

**Background**

- 1 By application dated 29 September 2020 the Applicant sought an order for payment of rent arrears against the Respondents in the sum of £3115.50. In support of the application the Applicant provided a copy Private Residential Tenancy Agreement, Rent Statement, Correspondence between the Applicant’s Agent and the local authority and Guarantor Agreement.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 20 November 2020. Due to the imposition of restrictions in response to the Covid-19 pandemic the Case Management was scheduled to take place by tele-conference. A copy of the application paperwork together

with the date and time of the Case Management Discussion and instructions on how to join the tele-conference was served upon the Respondents by Sheriff Officers on 22 October 2020.

### **The First Case Management Discussion**

- 3 The Case Management Discussion took place on 20 November 2020 by teleconference. Ms Emelia McMillan appeared on behalf of the Applicant. Ms Connelly was present. She advised that Mr Brown was unable to attend but that he was aware of the proceedings. The Legal Member therefore determined to proceed with the Case Management Discussion in his absence.
- 4 The Legal Member explained the purpose of the Case Management Discussion and asked parties to address her on their respective positions.
- 5 Ms McMillan explained that last rent received was in February 2020 which was before lockdown and the difficulties that had arisen as a result. The Applicant did not understand why rent was not being paid, as up until February housing benefit was being received from Argyll and Bute Council. Ms McMillan was aware that the Council had sought further information from Ms Connelly which had not been provided. It was a problematic situation as she knew Ms Connelly should be entitled to housing benefit. All the Applicant was seeking was for rent to be paid on time, that is why she had been instructed to make the application to the Tribunal.
- 6 Ms Connelly confirmed that she had never missed any payments before February, the rent had always been paid in time. In January, her son turned five and her benefits changes as a result from income support to employment support allowance. She had to reapply for benefits, which was hindered by lockdown and the closure of Council offices. Both Ms Connelly and her son are disabled and she outlined their health difficulties. Ms Connelly explained that she now has an advocacy worker who was going to sort her housing benefit out and she should be entitled to a backdate which would clear the arrears. She expected to receive confirmation of this in around three weeks time and asked the Tribunal to continue the application on that basis.
- 7 Ms McMillan advised that she was willing to help Ms Connelly to resolve the problem. The issue had been the lack of contact from Ms Connelly on the issue. The Applicant didn't know what was going on and that caused him concerns regarding whether rent would be paid. However Ms McMillan noted that a backdate may be forthcoming and confirmed that she would be content with a continuation of the Case Management Discussion on that basis. The Case Management Discussion was therefore adjourned.

## **The Second Case Management Discussion**

- 8 The second Case Management Discussion took place on 17 December 2020. Ms McMillan appeared again on behalf of the Applicant. Ms Connelly was present.
- 9 Ms McMillan confirmed that nothing had been received to the rent account since the last Case Management Discussion. No paperwork had been received confirming the status of Ms Connelly's housing benefit. Ms Connelly had phoned the previous day, at the last minute, but there had been no progress. The Applicant was seeking the order for payment and had no hope that the rent would be paid.
- 10 Ms Connelly explained that she was still trying to sort things out. Things had been difficult and she was struggling to cope. She had tried to get in contact with Ms McMillan to offer a payment of £650. Her uncle had agreed to help her out with the payment. Ms Connelly advised that her housing benefit application had been submitted. There had been delays as the adviser helping her was off sick and she had to complete and submit the forms herself. She had to borrow a printer to do so. Ms Connelly was seeking a continuation of the Case Management Discussion for her housing benefit forms to be processed and for the payment of £650 to be made. Accordingly, the Legal Member determined to adjourn the Case Management Discussion on one final occasion, for Ms Connelly's housing benefit application to be processed and for Ms Connelly to make a payment of £650 to the rent account.

## **The Third Case Management Discussion**

- 11 The third Case Management Discussion took place on 9 February 2021. Ms McMillan appeared again on behalf of the Applicant. Neither Respondent was in attendance. The Legal Member noted that intimation of the date, time and arrangements to join the conference call had been given to the Respondents and therefore determined to continue with the Case Management Discussion in their absence. The Legal Member further had regard to the fact that Ms Connelly had previously taken part in the previous Case Management Discussions and was therefore aware of how to participate in the proceedings, but had chosen not to do so in this instance.
- 12 Ms McMillan advised that the Respondent had made a payment of £650 since the last Case Management Discussion. The Applicant wished to amend the application to reflect the current balance of arrears which was £4127.10. The Legal Member noted that intimation of the amendment request had been sent to the Respondents at least fourteen days prior to the Case Management Discussion therefore they had been given the requisite notice under the Tribunal's Procedural Rules. Accordingly the Legal Member agreed to amend

the sum sought to £4127.10. Ms McMillan then advised that no housing benefit had been received to the rent account and she had received no notification from the Respondent or from the Council of any pending application or backdate. She sought the order for payment of the outstanding balance of arrears.

### **Findings in Fact and Law**

- 13 The Applicant entered into a Private Residential Tenancy Agreement with Ms Pauline Connelly in respect of the property which commenced on 21 June 2018.
- 14 In terms of Clause 8 of the said Tenancy Agreement Ms Connelly had a contractual obligation to pay rent at the rate of £450 per month.
- 15 The Applicant and Mr David Brown entered into a Guarantor Agreement dated 13 June 2018 in respect of the aforesaid tenancy between the Applicant and Ms Pauline Connelly.
- 16 In terms of the said Guarantor Agreement, Mr David Brown agreed to “*cover the rent and any loss or expense incurred by the Landlord as a result of the failure of the Tenant to pay the rent or fulfil her obligations in accordance with the terms of the said Tenancy Agreement*”.
- 17 As at 11 January 2021 rent arrears in the sum of £4127.10 are outstanding.
- 18 The Respondents are jointly and severally liable for payment of the said sum of £4127.10 in terms of the said Tenancy Agreement and Guarantor Agreement between the parties.
- 19 Despite repeated requests the Respondents have refused or delayed to make payment.

### **Reasons for Decision**

- 20 The Tribunal was satisfied that the Respondents had received proper notification of the application and the Case Management Discussion. The Tribunal therefore considered it was able to continue with the Case Management Discussion in the absence of the Respondents. The Tribunal was further satisfied that it was able to make a determination of the application at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties.
- 21 Based on its findings in fact, the Tribunal was satisfied that the Respondents were liable to pay the sum of £4127.10. The Tribunal accepted the evidence

of the Applicant that Ms Connelly had a contractual obligation to make payment of rent at the rate of £450 per month and Mr Brown had agreed to guarantee payments of any unpaid sums in terms of that obligation. The Respondents had not sought to dispute the terms of the application and there was no evidence before the Tribunal to contradict the position put forward on behalf of the Applicant. Ms Connelly had, in her verbal submissions at the first two Case Management Discussions, conceded that the arrears were due and had been given the opportunity to resolve her housing benefit but had failed to do so. There was therefore nothing before the Tribunal to prevent it from making the order sought by the Applicant.

22 The Tribunal therefore made an order for payment against the Respondents.

### **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.**

**Ruth O'Hare**



**9 February 2021**

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**Legal Member/Chair**

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**Date**