



Decision with Statement of Reasons by the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 and Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/CV/20/2589

Re: Property at 9 Bemersyde Road, Paisley, PA2 0UA (“the Property”)

Parties:

Mr. Michael Davies residing at Flat 3/2, 1 Margaret Street, Glasgow G5 9QE (“the Applicant”) per his agents, Messrs T.C. Young, solicitors, 7 West George Street, Glasgow, G2 1BA (“the Applicant’s Agents”)

Mr. Malcolm Livingstone residing at 19, Burnside, Bruichladdich, Isle of Islay, Argyll and Bute PA19 7UR, Mr. Daniel Smith residing at 9 Bemersyde Road, Paisley, PA2 0UA and having a care of address at care of Smith, 25, Craighton Road, Glasgow, G51 4FA and Ms. Ailsa Livingstone residing at 9 Bemersyde Road, Paisley, PA2 0UA (“the Respondents”)

Tribunal Members:

Karen Moore (Legal Member) and Janine Green (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondents are liable to the Applicant in respect of rent due amounting to Seven Thousand Three Hundred and Fifty Pounds (£7,350.00) Sterling.

Background

1. By application received on 14 December 2020 (“the Application”), the Applicant’s Agents on behalf of the Applicant made an application to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Chamber”) for a payment order for rent due arising from a private residential tenancy agreement between the Applicant and the second and third named Respondents. The Application comprised an application form, copy private residential tenancy agreement between the Applicant and the second and third named Respondents showing a monthly rent of £650.00, copy Guarantee signed by the first named Respondent in favour of the Applicant in respect of the said private residential tenancy agreement, a statement of rent due and paid between February 2018 and December 2020 showing rent arrears of £4,475.00 and letters dated 20 November 2020 from the Applicant’s Agents to each of the

Respondents advising that litigation was being contemplated in respect of recovery of the rent due.

2. On 6 January 2021, a legal member of the Chamber with delegated powers of the Chamber President accepted the Application and a Case Management Discussion (“CMD”) was fixed for 12 February 2021 at 14.00 by telephone conference call. The CMD was adjourned to 16 March 2021 at the second-named Respondent’s request and the Respondents were directed to provide a note of their position in respect of the Application.
3. Prior to the adjourned CMD, the second and third named Respondents submitted written representations indicating that they accepted rent arrears and explaining that they had suffered losses due to the Applicant’s failure to carry out necessary boiler repairs. They evidenced the losses as totalling £1,628.96 by submitting receipts for costs incurred by them. Also prior to the adjourned CMD, the Applicant’s Agents amended the sum sought to £4,800.00 and submitted intimation of same on all the Respondents.
4. The adjourned CMD took place on 16 March 2021 at 10.00 by telephone conference call. The Applicant did not attend and was represented by Ms. Morrison of the Applicant’s Agents. The first-named Respondent did not attend. The second and third named Respondents both attended and were unrepresented. Ms. Morrison advised the Tribunal that the Parties had reached a conditional settlement and, accordingly, there was a joint motion to adjourn the CDM to a later date for the terms of the settlement to be met.
5. The further adjourned CMD took place on 5 May 2021 at 10.00 by telephone conference call. The Applicant did not attend and was represented by Ms. Caldwell of the Applicant’s Agents. The first-named Respondent did not attend. The second and third named Respondents both attended and were unrepresented. Prior to the further adjourned CMD, the Applicant’s Agents lodged an undated rent statement showing £6,100.00 due and owing together with intimation on the Respondents. Ms. Caldwell advised the Tribunal that the Respondents had not adhered to the settlement agreement, that the second and third named Respondents remained in the Property and that no further rent had been paid. The second named Respondent advised the Tribunal that he and the third named Respondent had not been able to remove from the Property in time and that they planned to remove on or before Saturday 8 May 2021. He also advised the Tribunal that further payments of rent had been made and that, from his knowledge, the Applicant frequently failed to check his bank account and so the statement lodged was inaccurate. He stated that a payment had been in April 2021. As the second and third named Respondents disputed the sums claimed, a Hearing was fixed for 15 June 2021 at 10.00 am by telephone conference call.
6. The Tribunal issued the following Direction:
 1. *The Applicant is to lodge an accurate and up to date statement showing all rent due and all rent paid in respect of the tenancy of the Property;*

2. *With reference to the statements and receipts lodged by the second and third named Respondents on 8 March 2021, the second and third named Respondents are to update these or provide a separate note to clarify the amount of rent they claim is due and to provide proof of payment of rent; the repairs they say were required, the way in which they reported the repairs to the Applicant and the dates on which they did so;*
3. *In the event that the first named Respondent opposes the Application, the first named Respondent is required A written statement detailing his opposition to the Application;*
4. *All Parties are required to lodge a note of witnesses, if any, who will give evidence on their behalf at the Hearing. The said Direction should be complied with and documents lodged with the Chamber and should be copied to each other party by email or in hard copy no later than **noon on 25 May 2021.***
7. The Applicant complied with the Direction. The Respondents did not comply with the Direction.

Hearing

8. Shortly before the start of the Hearing on 15 June 2021, the second named Respondent contacted the Chamber by telephone to advise that he had taken ill, had been advised by NHS 24 to attend at Accident and Emergency, the third named Respondent requiring to transport him.
9. The Applicant and his agent attended the Hearing and opposed an adjournment. However, the Tribunal took the view that, given the emergency nature of the reason for the second named Respondent not being able to attend the Hearing, it was unfair to proceed with the Hearing and so the Hearing was adjourned to 3 August 2021 at 10.00 am.
10. The Tribunal issued the following Direction:
 1. *“With reference to the statements and receipts lodged by the second and third named Respondents on 8 March 2021, the second and third named Respondents are required to provide an additional note to clarify: the amount of rent they claim is due and to provide proof of payment of rent; the repairs they say were required, the way in which they reported the repairs to the Applicant and the dates on which they did so;*
 2. *With reference to the medical emergency reason given by the second and third named Respondents for their non-attendance at the Hearing fixed for 15 June 2021, the second and third named Respondents are required to submit a medical certificate certified by a health professional to confirm their attendance at a medical facility on the morning of 15 June 2021;*
 3. *In the event that the first named Respondent opposes the Application, the first named Respondent is required A written statement detailing his opposition to the Application;*
 4. *All Parties are required to lodge a note of witnesses, if any, who will give evidence on their behalf at the Hearing and*
 5. *The second and third named Respondents are required to attend the Hearing fixed for 3 August 2021 at 10.00., parts 1- 4 inclusive of this Direction should be complied with and documents lodged with the Chamber and copied to each other party by email or in hard copy no later than **noon on 30 June 2021.***

11. The Applicant complied with the Direction. The Respondents did not comply with the Direction.
12. Prior to the adjourned Hearing, the Applicant's Agents submitted a further statement of rent due and owing showing the sum due to be £7,350 to the end of July 2021 and showing that the last payment made by or on behalf of the Respondents was £700.00 on 5 March 2021. Proof of service on the Respondents was lodged and so the Application was amended accordingly.

Adjourned Hearing

13. The adjourned Hearing took place on 3 August 2021 at 10.00 by telephone conference call. The Applicant attended and was represented by Ms. Donnelly of the Applicant's Agents. None of the Respondents attended nor were they represented.
14. Ms. Donnelly advised that Tribunal that the first named Respondent had left a voice message with the Applicant's Agents that he was unable to attend the adjourned Hearing as he resides on Islay and cannot travel to Glasgow. He requested that his call be returned but did not leave a contact number. The Tribunal noted this position but took the view that, as the intimation of the adjourned Hearing and, indeed, all of the previous proceedings, is clear that the proceedings are by telephone conference call, the first named Respondent could have attended if he so wished.
15. The adjourned Hearing proceeded in the absence of the Respondents and Ms. Donnelly moved that the Tribunal grant a payment Order in the sum of £7,350.00.

Findings in Fact

16. From the Application, the CMDs and the productions lodged, the Tribunal found that:
 - i) There is a private residential tenancy agreement between the Applicant and the second and third named Respondents at a monthly rent of £650.00;
 - ii) There is a Guarantee signed by the first named Respondent in favour of the Applicant in respect of the said private residential tenancy agreement;
 - iii) Rent amounting to £7,350.00 is due and owing by the second and third named Respondents to the Applicant as at 28 July 2021;
 - iv) In terms of the said Guarantee, in the event of default to pay rent by the second and third named Respondents to the Applicant, the first named Respondent has undertaken, among other things, to pay that rent.

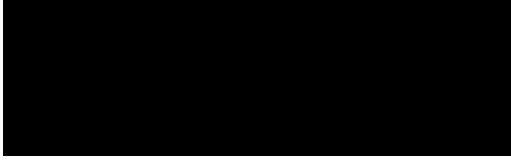
Decision and Reasons for Decision

17. The Tribunal, having found that rent amounting to £7,350 is due and owing by the second and third named Respondents to the Applicant as at 28 July 2021, and, having found that the first named Respondent is liable for payment of that unpaid rent in terms of the said Guarantee, makes an Order as requested by the Applicant's Agent on his behalf.

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.



3 August 2021

Legal Member

Date