



**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/19/1605

Re: Property at 47 Bank Street, Lochgelly, Fife, KY5 9QG (“the Property”)

Parties:

Mr Jeromey Jackson, 79 Woodmill Crescent, Dunfermline, KY11 4AN (“the Applicant”)

Ms Veronica McCulloch, 45 North Street, Lochgelly, KY5 9NR (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

- This matter called for a Hearing at 10am on 6 December 2019 in Fife Voluntary Action, 16 East Fergus Place, Kirkcaldy.
- The Applicant was not present but was represented by Ms Keenan of Jackson Boyd Lawyers. The Respondent was not present but was represented by her husband, Mr Allan McCulloch.
- The Tribunal began by considering whether there were any preliminary matters and by seeking to clarify the nature of the dispute and how each party would intend on proving their case.
- The Tribunal noted that the Applicant was seeking a Payment Order in the sum of £1,967.00 against the Respondent in respect of a guarantee agreement entered into in respect of a private residential tenancy.

- The Tribunal noted that the matter had called previously for three separate Case Management Discussions.
- It seemed apparent that there was no dispute that the Respondent had an obligation to pay certain sums to the Applicant by virtue of the guarantee agreement. The only issue was whether these sums should be reduced by virtue of the fact that a deposit of £330.00 had previously been returned to the Applicant and whether any proportion of this should be considered as having settled some of the rent arrears claimed.
- The Applicant intended to lead evidence from Mr Akhtar Ali who was the lettings agent and the Respondent had brought the original tenant, Mr Lauchlan Dolatowski, who it was said had defaulted in paying the rent that had given rise to this Application against the Respondent.
- The Tribunal expressed concern that it was effectively going to be asked to adjudicate on matters that appeared to have already been determined by the relevant tenancy deposit scheme before returning the deposit in full but without being provided with any of the documentary or other evidence that would have been put to the deposit scheme before they returned the deposit.
- After discussing this with the representatives it was confirmed that the Applicant was now content to have the whole deposit that had been returned to the Applicant deducted from the sum claimed in the Application. This meant that only a payment order of £1,637.00 was now being sought.
- Mr McCulloch accepted that, as the original tenant had defaulted in paying rent, that on the face of it the Respondent was liable to pay but he advised that the guarantee agreement was not "*worth the paper it was written on*" on account of the fact that the original tenant was now intending to settle the rent arrears claimed.
- During the Hearing the Tribunal made certain findings in fact as a result of the acknowledgements and representations made in the Hearing.
 - i. The Applicant was the landlord in a Private Residential Tenancy with Lauchlan Dolatowski who was the tenant which commenced on 28 August 2018.
 - ii. The monthly rental payment due was £330.00.
 - iii. The Respondent signed a guarantee agreement dated 28 August 2018 in respect of which she undertook, amongst other conditions:

" If the tenant shall default in the performance and observance of any of the provisions or terms on the tenant's part contained or implied in the Agreement I will on demand pay you all losses damages expenses

and costs which you may be entitled to recover by reason of such default.”

- iv.** The guarantee also provided that:

“This Guarantee shall constitute me as a principal debtor”.
- v.** Lauchlan Dolatowski defaulted on his obligations to pay rent and the sum of £1,967.00 was due in unpaid rent arrears.
- vi.** The Applicant received a deposit of £330.00 which had been paid for by the Respondent by Fife Council as part of their efforts to support Mr Dolatowski.
- vii.** This deposit was lodged with My Deposit Scotland and then returned in full to the Applicant following on from the ending of the tenancy.
- viii.** The Applicant had attempted to contact Mr Dolatowski to obtain payment of the outstanding rent arrears.
- ix.** No payments towards the rent arrears were made by Mr Dolatowski.
- x.** The Applicant was entitled to bring these proceedings against the Respondent by virtue of the guarantee agreement.
- xi.** The Respondent was contractually liable to the Applicant for the sums now claimed less the deposit sum previously returned.

The Tribunal therefore granted the Application and made a Payment Order against the Respondent for the sum of £1,637.00. No interest on the sum sought was claimed by the Applicant. Accordingly no award of interest was made.

The Respondent had made an Application for a Time to Pay Direction. This was not opposed by the Applicant and accordingly the Tribunal granted this Application and determined that the sum of £1,637.00 should be paid by the Respondent in 19 equal monthly instalments of £86.16 a month.

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.

Andrew McLaughlin

Legal Member/Chair

6/12/19

Date