



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

**Chamber Ref: FTS/HPC/CV/22/0702**

**Re: Property at The Eyrie, Berryfield Croft, Lewiston, IV63 6UW (“the Property”)**

**Parties:**

**Mr David Turnbull, Berryfield Croft, Lewiston, IV63 6UU (“the Applicant”)**

**Ms Jemma Cowan , 30 Cypress Place, Inverness, IV2 6DB and Ms June Cowan 5 Loch Ness Bungalows, Lower Balmacaan, Drumnadrochit, IV63 6UU (“the Respondents”)**

**Tribunal Members:**

**Steven Quither (Legal Member) and Leslie Forrest (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the First Respondent only is to pay to the Applicant the sum of TEN THOUSAND THREE HUNDRED AND FORTY POUNDS 93 PENCE (£10,340-93) STERLING.**

**1. BACKGROUND**

This is an application for payment of rent arrears arising out of a Private Residential Tenancy Agreement (“PRT”) between the Applicant and First Respondent in respect of the Property, commencing 1 June 2018 and ending on 5 October 2021, in respect of which the Applicant originally stated rent arrears had accrued in the sum of £10,840-93, up to said end date, which sum was subsequently amended to £10,340-93, as referred to hereafter. In addition, the Applicant brought proceedings against the First Respondent’s mother, June Cowan, referred to in Clause 37 of the PRT as “Guarantor 1”.

Prior to the first Case Management Discussion (“CMD”) on 30 May, the Second Respondent contacted the Tribunal by e-mails of 25 and 26 May 2022 denying she was, or ever had been, such Guarantor and seeking to be released from these proceedings. Accordingly, the question of the arrears and whether the Second Respondent was truly the First Respondent’s Guarantor appeared to be issues to be

considered, if not resolved, at that first CMD and, as it subsequently transpired, a further CMD and Hearing thereafter.

## **2. CASE MANAGEMENT DISCUSSIONS**

Two CMDs took place by teleconference, on 30 May and 21 July, both 2022. On both occasions, the Applicant was represented by his Letting Agent, Janet Turnbull, from Loch Ness Lettings, Drumnadrochit and the First Respondent also attended but the Second Respondent did not, nor was she represented.

### **i) 30 MAY 2022**

The Tribunal was aware notice and intimation of this CMD had been intimated to the Second Respondent by sheriff officers' letterbox delivery on 20 April 2022, which service appeared to have prompted her to contact the Tribunal regarding the Guarantor issue, per said e-mails of 25 and 26 May. However, notwithstanding her non-participation in this CMD, the Tribunal was able to confirm and agree with the parties attending the duration of the lease, as outlined in the preceding paragraph. Nothing else was capable of agreement.

The Tribunal confirmed and clarified with Miss Turnbull that, put simply, the Applicant's position was a straightforward one, namely that the sum sought was properly due and a rent arrears statement had been produced vouching same.

By way of response, the First Respondent advised, in summary:--

- a) She did not accept the amount of rent now claimed, albeit she accepted some rent was due. She would require to check how much she considered that amount was. Some of her payments of rent had been made by cash direct to the Applicant, which payments had not been taken into account in the Applicant's reckoning of the sum due;
- b) The deposit referred to in said arrears statement had not been lodged with any of the deposit agencies till 2020, despite having been paid in 2018;
- c) She queried and thought it unfair that the Applicant had let any arrears accrue for so long without raising the issue with her. In response to the Tribunal querying what action she had taken in respect of at least 2 letters from 1 April and 24 July 2021 about the level of rent arrears, she advised she had reported the condition of the Property to the relevant Environmental Health Department, as opposed to contacting the Applicant;
- d) The Property was troubled by mould, dampness and similar and had been a health hazard to her and her son. The Applicant had refused to properly address her concerns in respect of same, apart from carrying out one minor repair to the living room hearth;
- e) She and the Second Respondent did not accept the Second Respondent had ever agreed to act as her Guarantor and, indeed, only recalled handing over cash in return for the keys to the Property when she took up occupancy;
- f) Any dealings she had had with the Applicant had been unpleasant and on one occasion she had required to report his conduct to the police.

The Tribunal formally confirmed with Miss Turnbull that she did not accept these allegations and also that, at this stage, she was not minded to withdraw the proceedings against the Second Respondent.

It appeared clear that this matter would require to be resolved by an evidential hearing, in view of the wide divergence of positions between the parties.

Having considered all of the information provided, the Tribunal was concerned to ascertain what further evidence would be required for consideration in due course at any evidential hearing. It considered the following would be necessary, but not exhaustive, as assisting its consideration as to what was appropriate and/or relevant to the points in dispute, namely the amount of any rent arrears and whether the Second Respondent was Guarantor of the First Respondent for same. Accordingly, the Tribunal directed parties to lodge the following:--

- a) The Applicant to lodge covering correspondence regarding the formal setting up of the PRT, especially confirming how, where and by what means any signatures, electronic or otherwise, were appended to it;
- b) The Respondent to lodge such information as appropriate confirming payment and/or receipt of any rent payments, any complaints made by her about the condition of the Property to the Applicant, local authority or others and any report made by her to the police regarding the Applicant; and
- c) Such other information as parties considered appropriate and to which they might seek to refer in any future evidential hearing.

In all of the circumstances, the Tribunal considered it just to fix a further CMD to enable the parties to lodge the additional information referred to and for them and the Tribunal to consider same and whether any further information would then be required before any subsequent evidential hearing.

Obviously, the Second Respondent did not attend this CMD. In view of the Applicant not then being prepared to withdraw the claim against her, she remained a party to these proceedings. Accordingly, the date of the next CMD when fixed was again to be intimated on her by sheriff officers.

## ii) **21 JULY 2022**

In respect of the Second Respondent, no confirmation of sheriff officer intimation was available, but she again appeared to have made representations to the Tribunal in advance of same by way of response to representations and information lodged by the Applicant. However, notwithstanding her non-participation in this CMD, the Tribunal re-affirmed with the parties attending the duration of the lease, as outlined previously.

The Tribunal also clarified with parties what had been lodged since the previous CMD, by way of response to the discussion at said CMD and the Tribunal's subsequent Direction.

The Applicant had lodged 5 Productions, namely:--

1. a) & c) Screenshots;  
b) Copy PRT;
2. Letter to Tribunal requesting amendment of rent arrears, with supporting documentation;
3. Revised rent arrears statement, giving effect to no 2;
4. a) to f) Text messages dated 9 & 12 March 2021; and
5. Screenshots containing Notice to Leave dated 3 August 2021 and sundry other documentation.

The First Respondent had lodged further information by way of e-mail of 28 June 2022, containing further copy e-mails of 24, 26 & 27 July 2021.

In addition, the Second Respondent had written to the Tribunal on 1 July 2022, expressing views on various of the Applicant's said 5 Productions and enclosing letter to her from the Applicant dated 1 April 2021 in respect of rent arrears. The Tribunal confirmed both parties had been made aware of each other's productions and that neither had lodged anything further.

After hearing parties, the Applicant was permitted to amend the sum sought for rent arrears to £10,340-93, as brought out in her said productions 2 & 3.

In response to a further request from the First Respondent for the Second Respondent to be released from these proceedings, the Tribunal confirmed that the Applicant was still not prepared to withdraw the claim against her and that accordingly she required to remain a party to these proceedings.

Since there was no agreement on the 2 fundamental areas of dispute between the parties, namely any amount of rent arrears due and whether the Second Respondent was indeed the First Respondent's Guarantor, the Tribunal took the view that the matter would now require to proceed to an evidential hearing, with which view the parties agreed.

Without in any way binding the parties, the Tribunal confirmed with them that they would require to consider prior to then what, if any, further evidence or witnesses they might wish to produce at in support of their respective positions.

The Applicant advised she might have one further witness and the First Respondent that she might have more than one witness as well as additional documentation, possibly bank statements.

The Tribunal stressed such issues were entirely a matter for the parties and that it would, and could only, make any decision based on evidence made available to it. It also confirmed that the evidential hearing was when a decision would be made as to whether the Second Respondent was the First Respondent's Guarantor.

At all times, the Tribunal stressed to parties that the evidential hearing was when and where they could state their views as the merits of their own and the opposing case.

The Tribunal then adjourned proceedings for an evidential hearing to be fixed, to be intimated on the Second Respondent by sheriff officers, with parties to lodge list of witnesses and any further productions by no later than 14 days prior to the date of said hearing, any such further documentation etc. to be listed and indexed, for ease of future reference. An evidential hearing was subsequently fixed for 12 October 2022

### **3. HEARING 12 OCTOBER 2022**

Again, the Applicant was represented by his Letting Agent, Janet Turnbull, from Loch Ness Lettings, Drumnadrochit but, somewhat surprisingly, there was no attendance by either Respondent. Despite the Tribunal's intention for same to be intimated on the Second Respondent by sheriff officer, this had not been done. However, the Tribunal confirmed intimation of today's hearing had been made on 26 August 2022 to both Respondents to e-mail addresses previously used by them in correspondence with the Tribunal. Accordingly, the Tribunal was satisfied it could proceed, notwithstanding the Respondents' absence.

As indicated previously, the Tribunal required to consider 2 issues, namely:--

- a) The amount of any arrears properly due by the First Respondent; and

b) Whether the Second Respondent was Guarantor for same.

The Applicant's position, provided by Miss Turnbull by way of addressing the Tribunal and in response to specific points raised by the Tribunal, was

**a) RENT ARREARS**

- (i) The Applicant founded on the arrears statement previously lodged, as amended at CMD on 21 July, confirming a total due of £10,340-93, taking into account a deposit and payment of £500 traced since commencement of these proceedings;
- (ii) There had been some communication between the parties to try to resolve the rent arrears issue but this had proved fruitless, leaving the Applicant to consider he had no other option than recourse to the Tribunal;
- (iii) Any months not shown on the arrears statement, eg August to October 2018, were months where the full rent had been paid;
- (iv) For what seemed to be an "overpayment" of rent in May 2021, the sum of £150 overpaid had been applied as a credit to and reduction of the full amount outstanding;
- (v) She had assisted the Applicant, who was her brother, as his letting agent because, unless she had that status, she would have been unable to do so. Other than a small amount of properties owned by her family, she did not deal with any other properties and did not collect rental payments, these being paid direct to the owner of the property being let in any particular case, who would then provide her with information as appropriate if she required same for any proceedings such as these. Accordingly, whereas rent arrears accrued to £8950 as at 1 April 2021, she only contacted the Respondents about them at that time since it was only then that the Applicant made her aware of the extent of them; and
- (vi) While she recalls some discussion with the First Respondent about some of the rent due being paid by way of benefits, she did not know if the First Respondent had made, or progressed, any relevant application to any meaningful extent. However, no rent had been paid by way of benefits;

**b) SECOND RESPONDENT AS GUARANTOR**

- (i) The background to the Second Respondent being involved as a Guarantor of the First Respondent was that the Second Respondent had rented, without any issues arising, another property owned by the Applicant since about 2017. The First Respondent had no letting history, having previously lived with her father in Edinburgh, so the Second Respondent was asked whether she would act as Guarantor, which she was content to do. The PRT was accordingly drawn up to reflect this understanding and arrangement;
- (ii) On 1 June 2018, the start date of the PRT, Miss Turnbull met with the First Respondent at the Property and the First Respondent completed her "electronic signature" in the PRT at Clause 38 of same, using Miss Turnbull's laptop computer to do so. She then received the keys to the Property. The Second Respondent was not present, so was unable to add her "signature" by similar means (NB the Second Respondent

- denies this in her letter to the Tribunal of 1 July 2022 and states she was present at the Property on that date);
- (iii) Miss Turnbull then had a holiday break till about 12 June, on which date the Second Respondent attended at her home and signed the PRT in a similar way. She could not really recall with any degree of certainty how that meeting came about and did not have any note of same;
  - (iv) Despite this recollection of the Second Respondent not "signing" the PRT till 12 June 2022, the date of said "signature" on same at clause 37 bears to be 1 June 2018, Miss Turnbull could not explain why;
  - (v) The Respondents were then sent a copy of the "signed" PRT by e-mail of 12 June 2018, simply stating "Lease attached". There were no other e-mails or notes to assist in placing that in context;
  - (vi) It was only after a letter to the Second Respondent (headed "Sent to Guarantor") of 1 April 2021 advising her of the extent of arrears that the Second Respondent contacted Miss Turnbull querying her designation as such, in response to which Miss Turnbull referred back to the "Lease attached" e-mail of 12 June 2018, which position continued not to be accepted by the Respondents in subsequent correspondence and submissions to the Tribunal.

#### **4. FINDINGS IN FACT**

The First Respondent only is due and liable for arrears of rent up to 5 October 2021 in the sum of £10,340-93 arising out of a Private Residential Tenancy Agreement for the Property between the parties commencing 1 June 2018 in respect of which the Respondent agreed to pay rent of £500 per month.

The Second Respondent is not due for any arrears and was not the Guarantor of the First Respondent.

#### **5. REASONS FOR DECISION**

So far as the rent arrears were concerned the Tribunal had no difficulty accepting the position as stated on behalf of the Applicant, especially in the absence of any contrary position or evidence presented by the First Respondent, apart from what was previously stated at CMDs, namely that, broadly, she did not think the arrears were so high.

The Second Respondent as Guarantor was a different matter however. Miss Turnbull was questioned at some length about how the Second Respondent came as claimed by her to "sign" the PRT on 12 June 2018. She could not give any details of that arrangement which could be confirmed or relied upon by the Tribunal, stating that it proceeded from a verbal agreement and on the basis of "friendship". Given the inconsistency of the date on the PRT with the narrative offered by Miss Turnbull, the Tribunal had no basis on which to agree with her assertion. The Tribunal in a Direction to the parties had made it clear that the "formal setting up of the PRT, especially confirming how, where and by what means any signatures, electronic or otherwise, were appended to it" was an area which would be questioned at the hearing and requested evidence supporting the Applicant's outlined position be furnished ahead of the hearing. Nothing was provided which was supportive, far less conclusive, of the claim that the Second Respondent had agreed formally to act as Guarantor.

Accordingly, the Tribunal had difficulty accepting the Applicant's position in the absence of more definite and definitive supporting documentation. This might have

been by way of a meeting note from a file, covering correspondence sending the PRT to the Second Respondent for completion as Guarantor and/or sending her the completed PRT confirming her signature as Guarantor on same or some sort of acceptance or acknowledgement by the Second Respondent of that responsibility. Regrettably, no such documentation was available.

Furthermore, the date of the "signature" on the PRT did not correspond with Miss Turnbull's recollection of events ie that the Second Respondent completed same on 12 June 2018, said date on the PRT at Clause 37 being 1 June 2018 which, even by what Miss Turnbull was advising, was not correct.

Ironically, as referred to previously, the Second Respondent, in her letter to the Tribunal of 1 July 2022, stated that she was at the Property on 1 June 2018, but was not asked to sign the PRT! She is also adamant that she did not sign it on 12 June 2018.

This uncertainty left the Tribunal unclear and unconvinced as to whether the Second Respondent accepted being Guarantor to the First Respondent and in such circumstances it did not feel able to accept that to be the case.

None of this view is to be taken as any criticism of Miss Turnbull, whose courtesy and candour throughout these proceedings was commendable.

The decision is unanimous.

## **6. DECISION**

To grant the order for payment sought against the First Respondent only in the sum of TEN THOUSAND THREE HUNDRED AND FORTY POUNDS 93 PENCE (£10,340-93) STERLING.

### **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.**

Steven Quither

12 OCTOBER 2022

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Legal Member/Chair

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Date