Housing and Property Chamber
First-tier Tribunal for Scotland

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

Chamber Ref: FTS/HPC/CV/20/2383

Re: Property at 26B Highholm Street, Port Glasgow, PA14 5HL ("the Property")

Parties:

Chesnutt Skeoch Limited, 30 East Main Street, Darvel, KA17 0HP ("the Applicant")

Mrs Maria Alice Brito Paulo, Flat 1, Floor 6, Rankin Court, Old Inverkip Road, Greenock, PA16 9AZ ("the First Respondent")

George Coffey c/o Inverclyde Council, Hector McNeill House, 7-8 Clyde Square, Greenock, PA15 1NB ("the Seond Respondent")

Inverclyde Council, Hector McNeill House, 7-8 Clyde Square, Greenock, PA15 1NB; ("the Third Respondent")

Tribunal Members:

Ewan Miller (Legal Member)

Decision (in absence of the First Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment for the sum of £462.67 should be granted against the First Respondent in favour of the Applicant. No order for payment was made against the Second Respondent or the Third Respondent

Background

The Applicant was the owner of the Property. The Property had been let under a private residential tenancy by the Applicant to the First Respondent with effect from 23 April 2020 at a monthly rental of £350 per month. The tenancy lasted a relatively short period of time and it was agreed that possession was returned to the Applicant on 9 July 2020.

The Applicant alleged that there were arrears of rental, gas and electricity as well as cleaning and furniture removal costs. There had been a deposit of £350 taken from the First Respondent at entry which had been reclaimed by the Applicant and offset against the various amounts that was claimed were due. This left a balance remaining to the Applicant of £462.27, which was the sum sought by the Applicant.

Normally, an action for payment arising from a tenancy would only be raised against the tenant themselves. However, in this particular case, the Applicant had also raised the claim against the Second Respondent as an individual. The Second Respondent was an employee of the Third Respondent and the Third Respondent had been included in the proceedings as a result of their position as employer of the Second Respondent. The First Respondent was a vulnerable individual recently arrived from Portugal. The Second Respondent was a Vulnerable Groups Welfare Worker working for the Third Respondent. He had become involved with the First Respondent in relation to a move from the Property to another property.

The applicant alleged that the Second Respondent had, either in a personal capacity or in his capacity as an employee of the Thirds Respondent given some form of unilateral undertaking, guarantee or promise that all rent would be paid up to the date of termination and that all furniture would be removed. As this had not occurred the Applicant sought a payment order either from the Second Respondent if the said undertaking, guarantee or promise had been made in a personal capacity by the Second Respondent or from the Third Respondent if it had been made in his capacity as an employee for the third Respondent.

The Case Management Discussion ("the CMD")

The Tribunal held a CMD by teleconference on 22 March 2021 at 2pm. Mr Kenneth Johnstone, a director of the Applicant was present on the call and was joined by Mrs Alice Seggie, an employee of the Applicant. The Second Respondent was on the call. Ms Siobhan McMaster, a solicitor with the Third Respondent was on the call and was representing both the Second Respondent and the Third Respondent.

The First Respondent was not on the call and had not made any submissions. Ms McMaster submitted that it may be the case that the First Respondent had returned to Portugal and was not aware of the hearing. However, upon being asked by the Tribunal whether she had any specific evidence to support this, she advised that it was the Third Respondent's understanding that this may have occurred but that they could not state the position definitively. The Applicant advised that he had employed Sheriff Officers to trace the First Respondent and that she had been living at the address narrated in her designation. He had no reason to believe she was not still there. A Certificate of Service had been provided by Sheriff Officers for service of the Tribunal papers and confirmation of the hearing date. On balance, and in the absence of any tangible evidence to the contrary, the Tribunal was content to proceed with the CMD on the basis that service appeared to have taken place correctly.

The parties indicated that they were ready to proceed with the matter and lead evidence. All parties present indicated they would prefer for the matter to be

determined on the day. Accordingly, the Tribunal proceeded to make a determination on the day of the CMD.

Findings in Fact & Law

The Tribunal found the following facts to be established:-

- The Applicant was the owner of the Property;
- The Applicant had let the Property to the First Respondent with effect from 23 April 2020;
- The tenancy had terminated on 9 July 2020;
- At the date of termination the Property had not been cleared of all furniture;
- The Applicant had required to clean the Property and remove the furniture and incurred cost in doing so and suffered a delay in being able to let the Property again;
- There were arrears of rental from 23rd May until 9th July;
- After deduction of the deposit of £350 that was paid to the Applicant against the losses/rental arrears incurred, the Applicant had a remaining loss £462.67.
- The First Respondent was liable to the Applicant for the said sum of £462.67;
- The Second Respondent had, at all times, been acting as an employee of the Third Respondent;
- The Second Respondent was not liable to the Applicant for any sums in a personal capacity;
- Whilst the Second Respondent had been acting as an employee of the Third Respondent, he had not given any undertaking, guarantee or promise for or on behalf of the Third Respondent to the Applicant in relation to any matters concerning the Property;
- The Third Respondent was not liable to the Applicant for any sums.

Reasons for the Decision

The Tribunal had no difficulty in finding that the Frist Respondent was due the sum of £462.67 to the Applicant. The Applicant had produced invoices and rental statements showing the breakdown of the sums due after the deposit had been reclaimed. There were no submissions from the First Respondent to dispute these. It was clear from the correspondence submitted by the Applicant and the Second and Third Respondents that furniture had been left in the Property and that there were arrears of rental. The Tribunal accepted that the sum of £462.67 was due to the Applicant.

Ms McMaster made a brief submission that the furniture removal costs appeared to have been deducted against the deposit and so they could not now be claimed against the Second or Third Respondent. Ultimately the point was academic as the Tribunal found that neither the Second or Third Respondent was liable to the Applicant. In any event, the Tribunal would have allowed the Applicant to amend the allocation of how the deposit funds had been set against the various sums due.

The Tribunal then considered the position of the Second Respondent as an individual. The Applicant submitted that the Second Respondent had, both verbally on the

telephone on 12 June 2020 and in an email of 8 July 2020, given a unilateral undertaking that either he in his personal capacity or in his capacity as an employee of the Third Respondent would ensure that there were no arrears of rental and that the Property was cleared of furniture.

Setting aside, for the moment, the question of whether an undertaking was given or not, the Tribunal was readily satisfied that there was no personal liability on the part of the Second Respondent. The Applicant's attendance note of the calls of 12 June 2020 made it clear that it was Mr Coffey of Inverclyde Council that had phoned. The emails that were sent by Mr Coffey were on his Inverclyde Council email address and clearly stated his job title and contact details at Inverclyde Council. There was nothing to suggest he was acting in a personal capacity whatsoever. Accordingly, the Tribunal was easily satisfied that even if an undertaking of some sort had been given, it had not been given in a personal capacity but in the course of the Second Respondent's employment by the Third Respondent.

Again, setting aside for the moment the question of whether an undertaking was given or not, the next point for the Tribunal to consider was whether the Third Respondent could be vicariously liable for the actions of its employee, the Second Respondent. The Tribunal was satisfied that it could be bound by the acting of the Second Respondent. It is well established that employers can be liable for the actions of employees. The closer the course of conduct by the employee to their day to day job then the more likely it is that the employer will be bound by the actions of the employee. In this particular case, one of the Second Respondent's responsibilities as an employee was to assist vulnerable individuals with housing issues. Discussing rent arrears with a landlord and assisting a tenant in a move seemed to fall within the scope of those duties. Accordingly, as a general principle, the Tribunal was satisfied that the Second Respondent could bind the Third Respondent by his actings in the course of his employment.

Ms McMaster submitted that only authorised officers of the Third Respondent could bind the Third Respondent. The Tribunal did not accept this. Whilst formal documentation may need to be signed by an authorised officer, the Third Respondent was a large organisation with many layers of staff many of whom would have a degree of delegated authority to make decisions that bound the Third Respondent. As a matter of principle, the Tribunal accepted that it would be possible for the Third Respondent to be bound by the acting of the Second Respondent as their employee.

Accordingly, the Tribunal then required to determine whether the Second Respondent had given some form of undertaking in his capacity as an employee that the Third Respondent would ensure there were no rent arrears and that the Property was cleared of furniture at the point of termination of the lease.

The Applicant's position was that the Second Respondent had undertaken that the Third Respondent would ensure this was the case. The Applicant's case rested firstly on a telephone call on 12 June 2020 when the topic of the First Respondent being relocated elsewhere was discussed between Mrs Seggie of the Applicant and the Second Respondent. The second part of the evidence the Applicant sought to rely on was an email of 8 July 2020 from the Second Respondent to the Applicant. This email

was, in the view of the Tribunal, a key piece of information as to whether an undertaking was given or not.

In addition, the Applicant highlighted an email from the Second Respondent dated 29 July 2020. The Applicant alleged that the tone of the email was very aggressive and inappropriate. It made a variety of threats to report the Applicant to various regulatory bodies. The Applicant submitted that this aggressive tone had been taken as the Second Respondent realised at that point that he had gone further than he ought to have in relation to undertaking to make payment of the rent and to clear the Property. He was, the Applicant alleged, responding aggressively to try and get the Applicant to not seek payment from him and/or the Third Respondent.

Mrs Seggie of the Applicant spoke to the telephone conversation and her subsequent attendance note between her and the Second Respondent. Much of this call dealt with the practicalities of the First Respondent being relocated. Mrs Seggie submitted that on the call the Second Respondent had stated that he would seek to facilitate payment of the rent arrears and that he undertook that the Property would be cleared of all furniture at handover.

The Applicant also submitted that the email of 8 July 2020 constituted some form of guarantee or undertaking that that the Second or Third Respondent would be fully responsible for all the arrears and had undertaken themselves to ensure that the Property was cleared of all furniture. The Applicant alleged that the Second or Third Respondent had organised and paid for van rental to remove the furniture from the Property.

Ms McMaster for both the Second and Third Respondents submitted firstly that neither the Second nor Third Respondent had been a party to the original lease nor had they signed anything that would constitute a guarantee or formal undertaking in relation to the arrears or furniture clearance. Without something in writing there could be no guarantee or formal undertaking. Accordingly neither party could have any liability to the Applicant.

She further submitted that even if it were possible for an obligation to be created, that had not occurred in this case. The Second Respondent had simply, in the ordinary course of his work, being seeking to facilitate the process of the First Respondent relocating to another property. He had been trying to help matters and encouraging the First Respondent to make payments that were due and to remove from the Property. He had not gone so far as to bind either himself or the Council to pay the arrears. She advised that neither the Second or Third Respondents had paid for or organised the removal van.

The Tribunal then considered the submissions of both sides.

The Tribunal did not agree with Ms McMasters submission that as no formal guarantee had been signed at the commencement of the lease that the Second or Third Respondent could not be liable. If some form of undertaking had been given verbally at a later date that may be sufficient to bind the Second or Third Party and to make them liable.

In relation to the email of 29 July 2020 from the Second Respondent to the Applicant, the Tribunal, on balance, did not take the view that this supported the Applicant's contention that it was evidence that the Second Respondent had realised he had gone further than he ought to. The Tribunal was firmly of the view that the tenor and nature of the email from the Second Respondent was inappropriate and unprofessional. It was overly aggressive in nature. This fact had been acknowledged and accepted by the Third Respondent during a separate complaints process lodged by the Applicant. However, the Tribunal saw nothing in the email that specifically referenced the Second or Third Respondent accepting liability. The various threats in the email were said by the Second Respondent to be what the First Respondents intentions were. The Tribunal was of the view that the email was the Second Respondent being over-zealous in looking after the interests of a vulnerable third party. Whilst the email was unsatisfactory in nature generally, the Tribunal did not view it as particularly significant in relation to the question of whether an undertaking had been given.

The Tribunal then considered the telephone conversation and attendance note of 12 June 2020. The Tribunal found Mrs Seggie to be an honest and credible witness. They did not doubt that she gave her genuine view of the conversation. She stated that the Second Respondent had said to her on the call that he would "seek to procure" and "facilitate" payment of the arrears and would "assist" in the flat removal process. Her evidence was consistent with the terms of the attendance note she had made immediately following the call. However, the Tribunal could not see that the Second Respondent had gone so far as to take on an obligation for the payment of the arrears either personally or for the Third Respondent. He may well have stated that he was representing the First Respondent and dealing with the matter. However, that does did not create a personal liability for him or his employer. By way of an example, a solicitor will commonly represent and deal with matters for a client on their behalf but they do not become personally liable unless they specifically state that they will. The Tribunal was satisfied that the Second Respondent in that call was representing the interests of the First Respondent as she was a vulnerable person. His words, which were confirmed by Mrs Seggie, did not go so far as for either the Second or Third Respondent to take on the responsibility of payment.

Mrs Seggie stated that the Second Respondent had said he would "facilitate" payment. The Tribunal was of the view that Mrs Seggie and Mr Johnstone of the Applicant took a broader interpretation of the word "facilitate" than the ordinary usage of the word could sustain. The Cambridge Dictionary definition of "facilitate" is to try and make an action or a process easier. It appeared to the Tribunal that this did not mean that the Second or Third Respondent was undertaking to pay the arrears regardless. Rather they would try and ensure payment happened by encouraging the First Respondent to make payment and by liaising with the Department of Work and Pensions as the body giving the First Respondent the money. Similarly to "seek to procure" again simply means to try and make something happen. The ordinary, everday usage of such a phrase does not sustain an interpretation of it as a guarantee that an action will occur. Similarly, "assist" simply means to help. Accordingly, whilst the Tribunal accepted that these words had all been stated by the Second Respondent, the Tribunal did not agree with the interpretation placed on it by the Applicant that this

constituted some form of guarantee or undertaking that rendered the Second or Third Respondent personally liable.

The Tribunal also considered the email of 8 July 2020 from the Second Respondent to the Applicant. It is worth setting out the text of this in full:-

"Hi Alice in relation to our telephone conversation this afternoon, I have been very clear with Alice Paulo, that the UC housing costs that's due to be paid, is public money, and is intended to pay her rent with this, the housing costs are paid a month in arrears and is not debateable that the money should and will be paid to her landlord, I will facilitate Alice to pay the balance once her UC is paid or instruct DWP she has been overpaid, also my concerns if this was not paid would be facilitated to the home office gang masters department to procure the payment from her, I will be at the flat tomorrow at 12 to assist with the handover, Geo"

As with the original telephone conversation, the Applicant submitted this email represented an undertaking by the Second or Third Respondent to become responsible for payment of the rent and the clearance of the Property. Again, the Tribunal could not interpret this email as broadly as was done by the Applicant. It was apparent that the Second Respondent agreed that the rent was due and should be paid to the Applicant by the First Respondent. The Second Respondent certainly indicated he would tell the First Respondent to make payment. However, his email indicated that he would liaise with the DWP and the Home Office if this did not occur to try and get payment made. It seemed apparent, therefore, that the Second and Third Respondents were not accepting personal liability but simply doing what they could to assist in getting the payment made to the Applicant. The email acknowledged that payment may not be made by the First Respondent and that other parties would require to be involved. Nothing in the email stated that in the absence of payment from anyone else that the Second or Third Respondent would make payment instead. This fell some way short of the interpretation sought by the Applicant. In relation to the clearance of the Property, again the email simply said "assist with handover". That could not be said to be an undertaking on behalf of the Second or Third Respondents to guarantee this would happen or to pay for the costs if it did not.

Accordingly, the Tribunal was only content to make the payment order against the First Respondent. There was no liability on the part of the Second or Third Respondents.

The Applicant raised the question of whether expenses would be awarded against them. Within the setting of the Tribunal, expenses should only generally be awarded against a party where they have behaved in a frivolous or vexatious manner. Whilst the Applicant had been unsuccessful, the Tribunal did not question that they had raised the action against the Second and Third Respondents in good faith. They had conducted themselves within the hearing in a professional and courteous manner. The Tribunal saw no reason to make an award of expenses between the parties,

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.

Ewan Miller

Legal Member/Chair

08/06/2021

Date