

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 16 of the Housing (Scotland)
Act 2014**

Chamber Reference: FTS/ HPC/CV/18/2517

Re: 44(1F1), Warrender Park Road, Edinburgh, EH9 1HH (“the Property”)

Parties:

**Ferdousi Reza 21-23 Hill Street, Edinburgh, EH2 3JP (“the First Applicant”)
Humayun Reza 21-23 Hill Street, Edinburgh, EH2 3JP (“the Second Applicant”)**

**Paul Montague 1 3F3 Iona Street, Edinburgh, EH6 8SG (“the First
Respondent”)**

**Andrew aka Lindsay Kyle 18/6 Oxgangs Farm Drive, Edinburgh, EH13 9QQ
 (“the Second Respondent”)**

Tribunal Members:

Nairn Young (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

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

- Background

This is an application for an order for payment in relation to alleged arrears of rent. It called for hearing at 2pm on 22 February 2019. The First Applicant was not present. The Second Applicant was present in person. Both Applicants were represented by Mr Taylor of Murray Beith Murray, Solicitors. The First Respondent was present in person. The Second Respondent was present in person and represented by Mr McPhee, of the Community Help & Advice Initiative.

- Findings in Fact

The relevant facts of the case were no longer in dispute between the parties and were as follows:

1. The Property was let jointly to the Respondents and three other parties (an Amy Calvert, James Crawford and Robert Crawford) by the Applicants, in terms of an assured tenancy commencing 1 October 2016 ('the Lease'). Mr Robert Crawford had originally been named as a Respondent in this application, but, it not having been possible to locate him and effect service of the papers on him, the Applicants were content to proceed only against the Respondents as named above. The Lease was terminated on 30 September 2017. In terms of the Lease, the monthly rent was £1,900. The Lease provided that the Respondents and the other tenants were together jointly and severally liable for payment of the whole rent. At the termination of the Lease £13,175 was outstanding.
2. At some point towards the end of 2017, the First Respondent met the First Applicant to discuss the outstanding arrears. Following that meeting, an agreement was typed up and signed by the First Respondent on 4 December 2017 ('the Agreement') which stated, among other things, "Mr Montague has informed Dr Reza that he will try and get some money back from the tenants involved, but has stated that he will take full responsibility for the rent arrears at the property but it will take until October 2018 for monies owed to be paid."

- Submissions and Reasons for Decision

3. The Second Respondent began by making the plea of 'all parties not called', on the basis that not all of the tenants under the Lease had been made party to this application. Her representative relied on the case of *Firth v Anderson* (1954 SLT 27), a Sheriff Court decision concerning quite different factual circumstances to the present case. In that case, the Sheriff refused to sustain such a plea, saying, "The plea of 'all parties not called' falls to be sustained in my opinion where the issue being decided will bind others than the parties heard in which circumstances it is proper that before coming to its decision the Court should afford opportunity to those other parties to say their say. (p.27)."
4. The Tribunal did not consider that such a plea could be sustained in this application either. It was accepted by the parties (in the opinion of the Tribunal, correctly) that the liability of the tenants under the Lease is joint and several. It is of the essence of several liability that individual debtors may be pursued for the whole sum and that the choice of whom to pursue lies with the creditor. Authority for the applicability of this principle to contractual obligations may be found in *Richmond v Grahame and others* (1847 9 D. 633), an Inner House decision. In repelling the plea in that case, the Lord President stated the position quite clearly: "if parties bind themselves jointly and severally, any one may be called. (p.636)."

5. The Second Respondent also argued that she was not liable for the sum due because the Agreement had the effect of transferring all liability for any sums due to the First Respondent. Against that argument, the Applicants argued that neither the Second Respondent nor any of the other tenants was party to the Agreement. There was nothing explicitly relieving them of their obligation towards the Applicant in the Agreement, which would be required if it were to have that effect. The Agreement did not in reality add anything to the position that already pertained between the parties: i.e. that the First Respondent could be pursued individually for the whole debt. The Tribunal acceded to the Applicant's interpretation of the effect of the Agreement, for the reasons given.
6. The amount requested being owed jointly and severally by the Respondents, and there being no other reason put forward why it should not do so, the Tribunal determined to grant the order as applied for.

- Decision

Order made for payment by the Respondents jointly and severally of the amount of £13,175 (THIRTEEN THOUSAND ONE HUNDRED AND SEVENTY-FIVE POUNDS STERLING) to the Applicants.

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.~~

N Young

Legal Member/Chair

4 MARCH 2019

Date