



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/22/0784

Re: Property at 3 (1F2) Dickson Street, Edinburgh, EH6 8RJ (“the Property”)

Parties:

Ms Helen Singh, 30 Scald Drive, Polofields, Colinton, Edinburgh, EH13 0FE (“the Applicant”)

Mr Robert Gwynne Williams, Mr Robert Alan Gwynne, Asterville, Main Street East End, Chirnside, Duns, TD11 3XX; Asterville, East End, Chirnside, Duns, TD11 3XX (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatrige (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be amended by adding the second named Respondent as a party to the application and considered that a payment order for the amount of £5,917.90 by the Respondents to the Applicant should be granted.

A Background:

1. The application for an order for payment of rent arrears under S 71 of the Private Housing (Tenancies) (Scotland) Act 2016 arising from a Private Residential Tenancy (PRT) Agreement between the parties was made by the Applicant's representatives Messrs Gilson Gray on 15 March 2022.
2. The following documents were lodged by the Applicant in support application over the course of the case before the Tribunal:
 - a. Copy tenancy agreement between the first named Respondent and the Applicant over the property at 3 (1F2) Dickson Street, Edinburgh commencing on 3 May 2021.
 - b. Rent statement to 27.4.2021

- c. Rent statement to 1.4.2022
 - d. Rent statement to 1.6.2022
 - e. Joint owner authorisation dated 20.4.2022
 - f. Invoice from Messrs Gilson Gray for £318.00 dated 26 7.2022
 - g. Invoice from Messrs Gilson Gray for £351.80 dated 19.9.2022
 - h. Invoice from Messrs Gilson Gray for £30.60 dated 28.2.2022
 - i. Invoice from Messrs Gilson Gray for £1,560.00 dated 30.12.2022
 - j. Invoice for cleaning of property dated 21.7.2022
 - k. Inventory of property of 15.6.2022
 - l. email Gilson Gray 13.12.2022
 - m. email Gilson Gray 9.1.2023
 - n. email Gilson Gray 12.1.2023
 - o. rent statement to 11.1.2023
3. The documents and the CMD notes of 28.7.2022 and of 14.11.2022 and the related directions to the Respondents are referred to for their terms and held to be incorporated herein.
 4. No written representations were received from the Respondents prior to the CMD date of 23.1.2023.
 5. The Applicant's agent had confirmed the updated final rent arrears figure as £3,657.50 following the allocation of the deposit of £670 to a cleaning invoice of £106.50 and the rent arrears.

B The Case Management Discussion

The legal member explained the purpose of the CMD and the format this was to take.

Mr Gray of Messrs Gilson Gray LLP participated in the teleconference hearing on behalf of the Applicant.

Both Mr Gwynne and Mr Gwynne Williams took part in the teleconference hearing.

Mr Gwynne confirmed that he was the guarantor for the PRT entered into by the first named Respondent and the Applicant over the property.

The amount of rent arrears is not in dispute.

All participants agreed that rather than have 2 applications proceed conjoined for the same amount, it would be clearer and preferable to order the addition of the guarantor to the lease, Mr Gwynne, as a second Respondent to the application under reference CV/22/0784 and for the application under reference CV/22/3004 to be subsequently withdrawn.

This had been discussed at the previous CMD in November and further confirmed in writing in the CMD note and the subsequent email of the Applicant's agent.

At the CMD the Tribunal thus ordered in terms of rule 32 (1) (b) of the Procedural Rules for Mr Robert Alan Gwynne to be added as second Respondent in the application under reference number CV/22/0784.

In terms of rule 32 (2) of said Procedural Rules the Tribunal considered that since both applications consisted of the same document bundles and the intention to add Mr Gwynne to the application had been fully prepared prior to the CMD, there was no need for the Tribunal to make any consequential orders. This was duly noted by the parties.

Mr Gray thereafter withdrew the application under reference CV/22/3004. This was duly noted by the parties and the Tribunal.

With regard to the additional amounts claimed, Mr Gray referred the parties and the Tribunal to clause 37 of the Private Residential Tenancy document and explained that the further invoice of 30.12.2022 was the invoice for work in connection with the previous CMDs, in particular the attendance of the agent in connection with these.

Mr Gwynne stated he wondered why a tracing fee would be appropriate given that his address was contained in the PRT and he would have been able to contact his grandson throughout the process. Mr Gray explained that even after a letter was sent to the first named Respondent at the address in the summer, no reply had been received and thus the Applicant had to engage Sheriff Officers to trace the first named Respondent.

Mr Gwynne Williams stated that he was still homeless but still had his postal address at this grandfather's address.

Mr Gwynne provided his email address and confirmed he was content to receive Tribunal correspondence this way.

All parties stated that if a payment order was granted then the Respondents and the Applicant would discuss payment by instalments.

Mr Gray further withdrew the reference to interest payments as part of the application.

The amount calculated as the final amount outstanding in terms of the rent arrears and recovery invoices to date were not disputed.

C: Findings in Fact

Based on the evidence lodged and the representations of the participants at the CMDs the Tribunal makes the following findings in fact:

1. The first named Respondent is the former tenant for the PRT over the property which commenced on 3.5.2021 and ended by the tenant moving out on 9.6.2022.
2. The monthly rent for the property was £670.
3. The first named Respondent had paid a deposit of £670.
4. The second named Respondent is the guarantor stated in the PRT at clause 38 and had signed the PRT in that capacity.
5. Arrears of rent had accrued as stated in the rent statements lodged.
6. Following the end of the tenancy, the deposit sum was allocated in full to the Applicant and apportioned between £106.50 for cleaning costs at the end of the tenancy and £563.50 towards the outstanding arrears.
7. Clause 37 of the PRT makes provision that: "if the tenant defaults on payment of any rent or invoice due, the tenant shall indemnify the Landlord/Agent from and against all costs and disbursements incurred by the Landlord/Agents in pursuing the debt"
8. At the end of the tenancy the final amount of rent arrears was £3,657.50
9. This remained outstanding at the date of the CMD on 23.1.2023.
10. In addition tracing expenses and legal fees of £2,260.40 had been incurred by the Applicant and evidenced in the invoices lodged.
11. Despite attempts to recover the rent outstanding no payments had been made by the guarantor or the former tenant.
12. The guarantor and former tenant are jointly and severally liable for the arrears and the costs incurred by the Applicant in pursuance of the arrears.
13. The liability of the guarantor arises directly from the PRT.

D: Reasons for Decision:

1. The Tribunal considered that the material facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or
- (c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;
- (b) identifying what facts are agreed between the parties;
- (c) raising with parties any issues it requires to be addressed;
- (d) discussing what witnesses, documents and other evidence will be required;
- (e) discussing whether or not a hearing is required; and
- (f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

2. However, in terms of Rule 18 of the Rules of Procedure:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

- (a) may make a decision without a hearing if the First-tier Tribunal considers that—
 - (i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
 - (ii) to do so will not be contrary to the interests of the parties; and
 - (b) must make a decision without a hearing where the decision relates to—
 - (i) correcting; or
 - (ii) reviewing on a point of law,
- a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

4. The Tribunal did not consider that there was any need for a hearing. Both parties agreed that the amount was due. No application for a time to pay direction had been lodged by either Respondent. The Tribunal was satisfied that it had jurisdiction regarding the second named Respondent as the liability of the guarantor arises directly out of the PRT and the guarantee arrangements are a part of the PRT agreement.

5. The Tribunal makes the decision on the basis of the documents lodged by the Applicant and the information provided by all participants at the first, second and third CMD.

6. The Tribunal is thus satisfied that the Respondents were respectively former tenant and guarantor of the Private Residential Tenancy Agreement with the

Applicant for the property. The rent was paid as set out in the rent statements lodged. No applications for a time to pay direction were provided by the Respondents. The amounts stated in the invoices to the Applicant by the Applicant's agent are invoices in terms of clause 37 of the PRT arising from the non payment of rent. The final rent arrears amount is £3,657.50. As the amount is due and not disputed and all invoices had been intimated to the Respondents prior to the CMD on 23.1.2023, the Tribunal allowed the amendment of the application to the final amount of £5,917.90 as set out in the arrears statement of 11.1.2023 for £3,657.50 rent arrears and the invoices of 28.2.2022, 26 July 2022, 19.9.2022 and 30.12.2022 of a total of £2,260.40 legal costs in connection with the pursuing of said arrears.

7. Tribunal thus grants a payment order for the amount of £5,917.90 for rent arrears and legal costs accrued to the Applicant in pursuance of said arrears against both Respondents, for which the Respondents are jointly and severally liable in terms of the PRT.

E: Decision:

The Tribunal orders the second named Respondent to be added as a party to the application. The Tribunal grants the order for payment for the amount of £5,917.90 by the Respondents to the Applicant.

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.

Petra Hennig-McFatrige

**Petra Hennig McFatrige
Legal Member/Chair**

**23 January 2023
Date**