



**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/21/2292**

**Re: Property at 31 1/2 Whitehaugh Drive, Paisley, Renfrewshire, PA1 3PG (“the  
Property”)**

**Parties:**

**Mrs Edith Addison, 70 Kinpurnie Road, Ralston, PA1 3HG (“the Applicant”)**

**Mr John Burns and Ms Carol Burns, 47 Culverland Park, Liskeard, PL14 3HY  
 (“the Respondents”)**

**Tribunal Member:**

**George Clark (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that the application should be decided without a Hearing  
and made an Order for Payment against the First-named Respondent as  
principal debtor and the Second-named Respondent as Guarantor of the sum of  
£3,393.**

**Background**

By application, received by the Tribunal on 21 September 2021, the Applicant sought an Order for Payment in respect of unpaid rent that had become lawfully due to the Applicant by the First-named Respondent. The sum sought was £3,393 and the action was raised against the First-named Respondent as principal debtor and against the Second-named Respondent as Guarantor.

The application was accompanied by copies of a Private Residential Tenancy Agreement between the Applicant and the First-named Respondent, commencing on 17 January 2020 at a rent of £599 per month, and a Rent Statement showing arrears as at the date of application of £3,393, including the rent payment due on 16 August

2021. In the Tenancy Agreement, the Second-named Respondent was named as Guarantor for all payments of rent and other sums due by the First-named Respondent to the Applicant. The Rent Statement indicated that the rent due for March 2020 had not been paid, nor had any rent been paid for April, May, June, July and August 2021, apart from one payment of £200 on 4 June 2021. £600 rather than £599 had been paid in April 2020, meaning that the arrears as at the date of application were £3,393.

On 2 December 2021, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondents were invited to make written representations by 23 December 2021.

On 5 December 2021, the Second-named Respondent told the Tribunal by email that she had not been informed of the rent arrears until 10 August 2021. She had written to the Applicant's letting agents and had told them that, as Guarantor, she should have been informed when the first month's rent was missed.

On 17 December 2021, the Applicant's letting agents, Castle Residential, Paisley, told the Tribunal by email that the arrears had continued since 2020 and that the Second-named Respondent, as Guarantor, had been made aware by them. The Respondents had been kept up to date verbally and in writing, but had often not responded. The First-named Respondent had delayed his moving out date on a number of occasions and had not returned the keys, so his liability to pay rent had continued until the owner of the Property was able to regain possession. They provided a copy of an email of 4 August 2021 to the First-named Applicant in which they said that he had advised them previously that the Guarantor, the Second-named Respondent, had passed away. In an email of the same day, they gave the First-named Respondent a "friendly reminder to confirm if keys are still due to be returned tomorrow". In an email of 23 September 2021, the letting agents had offered to change the locks, to save the First-named Respondent having to post back the keys to them. They also provided a copy of an email to the Second-named Respondent of 17 July 2020, advising her that the rent was currently in arrears.

### **Case Management Discussion**

A Case Management Discussion held on 14 January 2022, which the First-named Respondent did not attend, was continued to allow the Second-named Respondent and the letting agents to discuss a possible repayment arrangement. The Second-named Respondent accepted that she was liable for rent arrears and was willing to enter into a repayment agreement, although she thought that the arrears were somewhat less than the sum being sought, as she understood that the tenancy had ended in June or July 2021.

On 19 January 2022, the Second-named Respondent advised the Tribunal that so far as she was aware, the First-named Respondent gave notice on 29 June 2021 of termination of the tenancy. She was not presently working, but was able to offer to pay £20 every two weeks towards the arrears, increasing that sum when she was back in work. On 26 January 2022. The letting agents told the Tribunal that the Applicant would accept repayment at £100 per month.

The continued Case Management Discussion was held by means of a telephone conference call on the morning of 7 March 2022. The Applicant was represented by Ms Jacqueline McLelland of Castle Residential, Paisley. The Respondents were not present or represented. The Applicant's representative told the Tribunal that, as no agreement on a repayment arrangement had been reached, her instructions were to seek the Order for Payment as requested in the application.

The Applicant's representative told the Tribunal that the deposit had been paid to the Applicant in full, but that this had been in respect of work required to the Property for which the First-named Respondent was responsible, so was not in respect of the rent arrears.

### **Reasons for Decision**

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to decide the application without a Hearing.

At the original Case Management Discussion, a question had been raised as to whether service of papers had been effected on the First-named Respondent. The Tribunal held that service had been validly effected by a process server, acting on the instructions of sheriff officers, on 4 December 2021 leaving a copy of the papers at his only known address, namely that of his mother, the Second-named Respondent.

The Tribunal held, on the balance of probabilities, that the tenancy had continued until at least 23 September 2021, as, although the First-named Respondent was no longer living in the Property by then, he had not returned the keys and the Applicant could not ascertain whether he had permanently vacated and removed his belongings. In a text message of 22 June 2021, he had told the letting agents "I'll give my notice and get up within next few weeks and return and sort flat", but there was no evidence that he had actually then given notice of termination of the tenancy. The text indicated his intention to give notice, but he did not appear thereafter to have done so. On 26 July 2021, he had told the letting agents by email that he would not be able to go up to the Property until around 5 August. The Tribunal's view was that the text of 22 June 2021 did not itself constitute the giving of notice, a view reinforced by the terms of the email of 27 July. Accordingly, the rent for the month beginning 17 August 2021 was lawfully due by the First-named Respondent.

The Tribunal noted that the Second-named Respondent had offered to pay the arrears at £20 every two weeks, but that this had not been acceptable to the Applicant, the letting agents having responded on 26 January 2022 to say their client would accept payments of £100 per month. The Respondents had not responded to that proposal and had chosen not to attend the continued Case Management Discussion. Accordingly, the Tribunal decided that the Applicant was entitled to an Order for Payment in respect of the full sum sought.

## **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.**

George Clark

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**Legal Member/Chair**

**7<sup>th</sup> March 2022**

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**Date**