



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 52 of the Private Housing (Tenancies) (Scotland) Act 2016.**

**UTS**

**Chamber Ref: FTS/HPC/EV/23/1529**

**Re: Property at Lower Flat, 3 Bruces Wynd, Pittenweem, Fife, KY10 2NR (“the Property”)**

**Parties:**

**Ms Janet Shelley, Mr Alan Griffiths, Denhall House, Kemback Bridge, Near Cupar, KY15 5TR; Roundabout Cottage, Lichfield Road, Hanch, Nr Lichfield, WS13 8HQ (“the Applicant”)**

**Miss Karon McBride, Lower Flat, 3 Bruces Wynd, Pittenweem, Fife, KY10 2NR (“the Respondent”)**

**Tribunal Members:**

**Lesley Ward (Legal Member) and Elizabeth Williams (Ordinary Member)**

**1. Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) dismissed the application on the basis that a Private Residential Tenancy Agreement has not been constituted.**

**Background**

**2.** This was a second case management discussion (‘CMD’) in connection with an application for eviction in terms of rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 on ground 1 (landlord wishes to sell) of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016. The Applicant was represented by Ms Dorka Ilonka of Rollo Law LLP and the Respondent Miss McBride attended.

**3.** A first CMD was adjourned as the Tribunal was not satisfied that a Private Residential Tenancy (‘PRT’) had been constituted. The Tribunal made the following directions:

The Applicant is required to provide:

- (1) A copy of the death certificate for Mr John Griffiths deceased.
- (2) A copy of the short assured tenancy agreement between Mrs Edna Griffiths and Miss Karon McBride from around 7 April 2017 together with the AT5 and any other tenancy agreements between those parties (with the exception of the agreement already provided with a start date of 7 October 2018).
- (3) Their submission as to whether a private residential tenancy has been constituted with particular reference to the Private Housing (Tenancies) (Scotland) Act 2016 (Commencement No.3, Amendment, Saving Provision and Revocation) Regulations 2017.

4. A second case management discussion was due to take place on 8 November 2023. The Applicant failed to comply with the directions and on 7 November 2023 the Respondent contacted the Tribunal to seek an adjournment given the Applicant's failure to comply. The Tribunal decided it was in the interests of justice to adjourn. Accordingly, the Tribunal reissued the directions. The directions were complied with on 20 November 2023 when the Applicant's solicitors lodged:

- A copy of the death certificate for Mr John Griffiths deceased;
- Short Assured Tenancy Agreement between Alan Griffiths (Power of Attorney for Edna Griffiths) and Karon McBride from 7th April 2017 to 7th October 2017, together with AT5 form, Extension of Short Assured Tenancy from 8th October 2017 to 7th April 2018 and Extension of Short Assured Tenancy from 8th April 2018 to 7th October 2018;
- Submission as to whether a PRT was constituted.

## **5. Preliminary matters**

Having read all of the documents that had been submitted the Tribunal was of the view that the agreement between the parties was a short assured tenancy and not a PRT. The Tribunal provided a copy of the decision of the Upper Tribunal by Sheriff Jamieson dated 6 January 2023 on this point (UTS/AP/22/0007). Miss McBride also advised the Tribunal that she had secured alternative accommodation, was in the process of signing a lease and anticipated handing the keys back to the Applicant's solicitors in April 2024.

## **6. Discussion**

The Tribunal took into account the submission made by the Applicant and accepted that in terms of section 46A(1) of the Housing (Scotland) Act 1988 the landlord and tenant under an assured tenancy may agree that on a date specified by them, the tenancy will cease to be an assured tenancy and become a PRT. However in the Tribunal's view, the status of the tenancy is governed by statute and not by the parties agreement. The savings provision of regulation 6 of the Private Housing (Tenancies)(Scotland Act 2016 (Commencement No 3, Amendment, Saving Provision and Revocation ) Regulations 2107 make it clear that if the parties enter into a new

agreement after 1 December 2017 the provisions of section 32(3)(b) of the Housing (Scotland) Act 1988 (the 1988 Act) are 'saved' and a new contractual tenancy created after 1 December 2017 will be a short assured tenancy under the 1988 Act if the same ish, premises and parties are applicable. Ms Ilonka ventured to suggest that the saving provision had been repealed however although the Private Housing (Tenancies)(Scotland Act 2016 (Commencement No 2, Amendment, Saving Provision and Revocation ) Regulations 2017 have been repealed, the Private Housing (Tenancies)(Scotland Act 2016 (Commencement No 3, Amendment, Saving Provision and Revocation ) Regulations 2107 remain in force.

## **7. Findings in fact**

- The Applicants are the executors in the estate of the late Edna Dorothy Griffiths.
- The property forms part of her estate.
- The second named Applicant let the property to the Respondent on a short assured tenancy on 28 March 2017 for an initial period of 7 April 2017 until 7 October 2017.
- An AT5 was served on 7 April 2017.
- The tenancy continued by tacit relocation from 7 October 2017 until 7 April 2018.
- The parties agreed in writing on 28 March 2018 to continue the tenancy for a further period from 8 April 2018 until 7 October 2018 on the same terms and conditions.
- The parties entered into a further tenancy agreement for let of the property from 7 October 2018 on 15 August 2018
- That agreement purported to be a PRT.
- That agreement came into being at the ish of 7 October 2018.
- That agreement was for let of the same premises.
- That agreement had the same landlord and tenant as the first short assured tenancy constituted in March 2017 and in existence since 7 April 2027.
- A short assured tenancy has been in existence since 7 April 2017.
- The tenancy has not reached its ish
- The Applicant served the Respondent with a notice to leave in terms of section 62 of the Act on 9 January 2023.
- No notice to quit or section 33 notice have been served.
- A short assured tenancy remains in place.

## **8. Reasons**

The Tribunal is not satisfied that a PRT had been constituted. The parties cannot agree to contract out of the saving provisions which mean that section 32 of the 1988 Act continue to apply if certain conditions are met. These are set out in Stalker on Evictions at page 263:

*A new contractual tenancy created after 1 December 2017 will be a short assured*

*tenancy under the 1988 Act, subject to the following conditions:*

- *It must "come into being" at the ish of an existing short assured tenancy,*
- *It must be of the same or substantially the same premises,*
- *The new tenancy must have the same landlord and tenant.*

In this case all three conditions have been fulfilled. Sheriff Jamieson considered this point in the Upper Tribunal case of Boyle-v- Ford UTS/AP/22/0007. In that case a short assured tenancy was entered into each year. The sheriff set out the three conditions that are required to be fulfilled and he considers the terms of the saving provision. He held that the First-tier Tribunal was wrong in concluding that a PRT had been constituted and that the fact that the parties tenancy agreement was headed a short assured tenancy agreement was immaterial.

9. Given the Tribunal was not satisfied that a PRT has been constituted a notice to leave cannot bring the tenancy agreement to an end and the application cannot be considered. The tribunal accordingly dismissed the application.

## **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.**

**15 February 2014**

**Legal Member/Chair** \_\_\_\_\_

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**Date**