



**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/20/0369**

**Re: Property at 3/2 276 Burnfield Road, Glasgow, G43 1ED (“the Property”)**

**Parties:**

**Ms Solanki Mitra, Flat 02 G, 69 Kelvinhaugh Street, Glasgow, G3 8PE (“the Applicant”)**

**Mr Adeel Rahaman, 3/2 276 Burnfield Road, Glasgow, G43 1ED (“the Respondent”)**

**Tribunal Members:**

**Lesley Ward (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) dismissed the application.**

1. This is a case management discussion ‘CMD’ in connection with an application in terms of 71 of the Private Housing (Tenancies) (Scotland) Act 2016 , ‘the Act’ and rule 111 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, ‘the rules’, to recover a deposit and other losses incurred by the applicant.
2. The tribunal had before it the following copy documents:
  - (1) Application dated 3 February 2020.
  - (2) Lodger agreement dated 20 August 2019.
  - (3) Emails from the applicant dated 5 and 13 August 2020; 7 and 8 September 2020.

3. The CMD proceeded via conference call due to the Covid-19 pandemic. The applicant did not attend the CMD. She contacted the chamber by email on the day of the CMD and stated that she was unable to call in because she had no sim card for her phone. She had already emailed to ask if the call could take place via the internet because of the expense in her calling from India where she now resided. The respondent attended the CMD.

### **Preliminary matter**

4. The tribunal issued directions to the applicant on 24 July 2020 with a time limit of 14 August 2020. There were 2 aspects to the directions. The first was in relation to the tribunal's jurisdiction to deal with this matter. It was noted that the applicant had lodged a "lodger agreement" which stated that the landlord resided in the property and therefore the tenancy cannot be a private residential tenancy 'PRT'. The direction stated:
  5. *The Applicant is called upon to make written representations setting out in light of paragraphs 7 to 9 of schedule 1 of the Private Housing (Tenancies)(Scotland) Act 2016 why the Tribunal should consider the arrangement does constitute a Private Residential Tenancy. The Tribunal would expressly encourage the Applicant to seek legal advice on this matter before providing those representations.*
6. The second aspect of the direction was in relation to the quantum of the applicant's claim. The applicant was asked to provide a list of items which make up the sum sought of £500 and evidence of the costs such as a receipt or invoice.
7. The respondent was also asked in the direction to provide his written representations regarding the tribunal's jurisdiction and whether a PRT has been constituted.
8. The applicant sent an email to the tribunal on 5 August 2020 stating that she was leaving the country, did not have any receipts for the items and that she was intending to seek legal advice. She wrote further on 13 August 2020 and stated "I have spoken to a legal adviser and she told me that this 'lodger agreement' that was handed to me by the landlord falls under common law and is not private tenancy agreement".
9. The respondent did not lodge any written representations in advance of the CMD.

### **Discussion**

10. The respondent's evidence to the tribunal at the CMD was that he resides in the property as his only home. It was his view that the agreement was not a PRT but a lodger agreement as he was a resident landlord. He did however

agree that the applicant had paid a deposit of £300 but that she had damaged items of property. He also stated that she had left a few dishes in the property but nothing more.

## 11. Finding in fact

The tribunal found the following to be established on the balance of probabilities:

- (1) There was a rental agreement between the parties beginning on 20 August 2019 for a room and shared premises at the property
- (2) The respondent resided in part of the property as his only or main residence.
- (3) The property was not let for the exclusive use of the applicant but on a shared basis only.

## Reasons.

12. The tribunal noted that the applicant was unable to attend the CMD. The tribunal was however satisfied that it was fair to go ahead with the CMD in the applicant's absence. The applicant had been given fair notice of the jurisdiction point and she indicated in her email of 13 August 2020 that she had sought legal advice. The legal advice she disclosed was in accordance with the tribunal's view that the agreement between the parties is not a PRT.

13. The tribunal's jurisdiction is founded under s71 of the Act which states:

*A tenancy is a private residential tenancy where-*

- (a) The tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling,*
- (b) The tenant occupies the property (or any part of it) as the tenant's only or principal home,*  
*And*
- (c) The tenancy is not one which schedule 1 states cannot be a private residential tenancy.*

14. Schedule 1 of the Act contains the list of tenancies which may not be a PRT. Paragraph 9(2) of that schedule provides:

*(2) This sub paragraph applies to a tenancy if, from the time it was granted a dwelling within the same building as the let property has been occupied as the only or principle home of a person who, at the time of occupying it, has the interest of the landlord under the tenancy.*

15. The tenancy agreement lodged by the applicant refers to the applicant's accommodation as 'bedroom which includes drawers and wardrobe'. The Kitchen, bathroom, hall and balcony are referred to as 'shared areas'. The address given for the landlord is the address of the property.
16. The tenancy agreement falls within the exclusion of schedule 1 and is not a PRT as the landlord also occupied the property as his only or principal home.
17. Further, the tenancy agreement does not fall within the definition of s1 of the Act as the applicant rented a room and the property was not let to the applicant as a separate dwelling.
18. Accordingly, the tribunal has no jurisdiction and the tribunal dismissed the application.
19. The applicant may wish to pursue the matter in the Sheriff Court using the Simple Procedure.

## 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.**

**L. W**

**8 September 2020**

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**Lesley A Ward Legal Member**

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**Date**