



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/22/2049**

**Re: Property at 101 Virginia Street, Aberdeen, AB11 5AX (“the Property”)**

**Parties:**

**Mr Maximilian Lai, RM B06 8/F, The Met Acappella, 7838 Tai Po Rd, Tai Wai Shatin, Shatin Hong Kong SAR, Hong Kong (“the Applicant”)**

**Joanna Stewart, 101 Virginia Street, Aberdeen, AB11 5AX (“the Respondent”)**

**Tribunal Members:**

**Yvonne McKenna (Legal Member) and Eileen Shand (Ordinary Member)**

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

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

**(FIRST) that an order for reduction of the tenancy agreement in respect of the Property between the parties be granted.**

**(SECOND) That an order for payment be made in the sum of THREE THOUSAND SIX HUNDRED AND THIRTY POUNDS AND NINETY SEVEN PENCE £3,630.97.**

**Background**

1. The Applicant seeks reduction of a tenancy agreement entered into in respect of the Property and signed by the Respondent on 28 April 2022. The lease provided a commencement date of 15 May 2022 and rent to be paid at the rate of £420 per month.
2. The Applicant states that he was fraudulently induced to enter into the tenancy agreement on the basis that the Respondent stated that she was in employment and that shortly after she moved in that the Applicant discovered that the information she had given him regarding her employment status was false.

Accordingly he seeks to reduce the tenancy agreement on the basis of fraudulent misrepresentation.

3. The application details that the Respondent contacted the Applicant's wife on 23 April 2022 following an advert on "Gumtree" relating to the lease of the Property. The Respondent stated in messages on "Gumtree" with the Applicant's wife that she was a "clean freak, quiet, single, I work that is about it." Without viewing the Property the Respondent offered to pay half of the deposit i.e. £210 to secure the lease. The Respondent took occupancy on 14 May 2022 and has only paid a half share of the deposit, £210, and made no payments of rent since that date.
4. The Applicant also seeks compensation in respect of the lost rental period to reflect the rent that the Applicant would have expected to obtain had he been able to source another tenant for the Property.
5. A Case Management Discussion (CMD) took place on 31 October 2022. The Respondent did not participate in this.
6. Since the date of that CMD, the Respondent lodged with the Tribunal a number of e-mails in which she stated that she is not, "a squatter", and made various complaints in relation to the way that she was being treated by the Applicant and his wife. In particular she forwarded an e-mail dated 19 December 2022 headed "Evidence" which provided information regarding a broken window at the property and making various complaints. None of the matters detailed related to the application which is before the Tribunal.
7. A Direction was issued by the Tribunal on 3 January 2023 setting out that the Respondent was required to provide full written representations setting out clearly her position in respect of the case before the Tribunal -namely that the lease should be reduced due to the Respondent's fraudulent representations and damages should be paid by the Respondent to the Applicant as a consequence.
8. Any such documentation required in terms of the said Direction to be lodged with the Chamber no later than close of business on 19 January 2022.
9. A second CMD took place on 13 January 2023 by teleconference .The Applicant was represented by Mr Alasdair Taylor. The Applicant and his wife both dialled in to the teleconference. The Respondent was not present and was not represented.
10. At the date of the second CMD the Respondent had not lodged any written representations answering the case before the Tribunal.
11. The Tribunal stated that the CMD had been arranged in order that the Respondent could participate as she had not engaged at the time of the earlier CMD and now seemed to be in regular communication with the Tribunal administration. The Tribunal wanted to make the Respondent aware that the communication which she was forwarding to the Tribunal did not appear to bear any relevance to the proceedings currently before the Tribunal.
12. The Applicant's Representative Mr Taylor clarified that the Applicants correct name is Maximilian Lai. The Tribunal apologised for any earlier misspellings of that name in earlier communication.
13. Mr Taylor invited the Tribunal to consider the application at the CMD, without the matter proceeding to a Hearing and directed the Tribunal to the dicta of Sheriff Di Emidio in the Upper Tribunal decision *Woro V Brown (UTS/AP/21/0031)*.
14. The Tribunal stated that this authority had been considered and the Tribunal was of the view that this could be distinguished from the present proceedings. In the Upper Tribunal case the lower tribunal were criticised in seeking to look beyond the terms of a written guarantee in an undefended application. In the case

currently before the Tribunal, the Tribunal was being asked to do something quite different- not to rely on the written terms of the tenancy agreement, and to conclude that the tenancy agreement should be reduced as a result of fraudulent misrepresentation.

15. The Tribunal were of the view that this would require to be fully explored and evidence led to the Tribunal at a Hearing which was scheduled to take place on 3 February 2023 at 10am.

### **Documents Lodged with the Tribunal**

16. The Documents lodged by the Applicant were;-

- Application to the Tribunal Form F
- Print out of exchange of messages on "Gumtree" between the Respondent and the Applicant's wife
- Print out of messages on "Whatsapp" from 5 to 17 May 2022
- Tenancy Agreement signed by the Respondent on 28 April 2022
- Payslip produced by the Respondent dated 2 October 2021
- Copy payslip produced by the Respondent dated at or about 30 April 2022
- E-mail dated 12 June 2022 with attachments from the Respondent to the Applicant's representative providing information from Universal Credit for the assessment period 7 May -6 June 2022

In addition a short video of the original advertisement of the Property was lodged

17. The Documents lodged by the Respondent were ;-

- E-mails dated 3 November 2022, 9 December 2022, 15 December 2022 and 19 December 2022.

### **The Hearing 3 February 2023**

18. The Hearing took place by teleconference on 3 February 2023 at 10am. The Tribunal did not commence until 10.05 to afford the Respondent the opportunity to join.

19. The Respondent was not in attendance.

20. The e-mails which the Tribunal had received from the Respondent were not addressing the matters before the Tribunal and related *inter alia* to her enquiring why her landlord was messaging her stating that she was committing a crime and requesting help; remonstrating that she was not a squatter; providing what she referred to as evidence of threatening behaviour by the Applicant and his wife and complaining about how she was being spoken to; querying further procedure before the Tribunal; sending information regarding a broken window and a broken door lock at the Property.

21. The Applicant dialled in and was represented by his solicitor Mr Alasdair Taylor.

22. The Applicant gave evidence and his wife Ms Leva Klemkaite also gave evidence as a witness to the Tribunal.

23. Mr Taylor made opening submissions. He stated that these were unusual proceedings in respect of which the Applicant sought reduction of a lease and damages. He said that the Applicant's position is that the Respondent led him to believe that she was working before he agreed to take her on as a tenant. She had sent a message to that effect stating that she worked. On the strength of that representation, and as the Respondent offered early payment of the deposit, he took her on as a tenant. Only on receipt of evidence of her employment did, "alarm bells go off". The true position was that she was not working and the Applicant and his wife were misled. There were other interested parties in the Property but the Respondent was preferred as she said that she was working.
24. He submitted that the law states that where a contract is entered into, that if there is fraudulent misrepresentation, then the resultant contract is voidable. In this case, he submitted that the contract is easily voidable and the Applicant seeks the original position to be restored.
25. He submitted that the Respondent has had 2 opportunities to lodge representations with the Tribunal to challenge the Applicant's case and has not done so. She was provided with a very specific Direction to provide written representations and has declined to do so. She has occupied the Property since May 2022. No rent has been paid. The Applicant is incurring further costs.
26. Mr Taylor stated that the Applicant and his wife would give evidence to supplement the written paperwork. He submitted that the Tribunal had clear evidence before them that the Respondent was not working. She had provided an e-mail confirming that she was in receipt of Universal Credit which included a Housing element.
27. Oral evidence was then led to the Tribunal

### ***Evidence of the Applicant***

28. Mr Lai said that he was the owner of the Property. He currently resides in Hong Kong. He has owned the Property since 2013 when he was working in Aberdeen. He returned to Hong Kong between 2014-2015.
29. He said that initially he had friends who stayed in the Property and he charged them rent. Thereafter he let the Property out. This was in approximately 2018-2019. He has had a number of tenants, 4 including the Respondent.
30. His last tenant left in May 2022. He knew that his tenant was leaving in advance and he was provided with notice.
31. He said that he and his wife posted an advert on "Gumtree" on his wife's account on that forum. This detailed that the Property was available for rent. They were contacted by a couple of interested parties one of whom was the Respondent.
32. Mr Lai explained that a video of this advertisement of the Property had been lodged with the Tribunal. He confirmed that the video lodged was the advertisement and said that one can only find this now by logging onto his wife's account as the advertisement is no longer available on site.
33. The advertisement states that the Property is "ideal for a single person, couple, working professionals as well as students"
34. He said that he and his wife had prepared the advertisement, and that he was aware of the wording in the advertisement.
35. He said that of the 4 interested parties that he and his wife "thought they would go with the Respondent" and therefore the advert was taken down. There were

others who were in employment who were interested parties at the same time as the Respondent.

36. He referred in his evidence to the various messages that were exchanged between the Respondent and the Applicant on his wife's "Gumtree" account. Although this was on his wife's account this was discussed between himself and his wife and he was aware of the content of the messages at the time.
37. The Respondent stated on a message on 23 April 2022, "I'm clean freak, quiet, single, I work that is about it." ..."
38. The Applicant took from this comment that the Respondent was looking for a long-term lease, that she was clean, quiet, single and that she had a job that paid her money.
39. If she had not said anything about being in employment, he would not have continued discussions and he would have pursued a, "more promising" interested party.
40. He did not think that he had previously rented the Property to someone who was not in gainful employment. If the Respondent was not in employment he would absolutely not have been interested in her as a tenant.
41. The reason that he selected the Respondent as a tenant was that she was very keen, eager and she said that she would pay a deposit as soon as possible. He wanted things sorted out as soon as possible given his existing tenant had given notice, and chose the Respondent.
42. Mr Lai was then referred to a series of Whatsapp messages exchanged between his wife and the Respondent commencing 28 April 2022 and ending on 3 May 2022.
43. On 28 April 2022 12.23.21 AM the Respondent wrote, "If I could get a copy of the lease for me to sign asap so I can get cracking with changing address on stuff etc. and sort moving." This was the Respondent's first request for the lease.
44. Later that day he sent the tenancy agreement at 10.56.10AM. This was returned signed by the Respondent at 9.18.51 PM. At that point the Applicant had not signed the lease. In fact he never signed the lease.
45. The Respondent agreed that she would pay half of the deposit straight away with the balance the following Monday.
46. She duly paid the half deposit on 29 April 2022.
47. Mr Lai said that he has not received any payment from the Respondent since then
48. He was then referred to a second series of Whatsapp messages commencing 5 May 2022, ending 19 May 2022. These were messages exchanged between the Respondent and himself on his Whatsapp account.
49. On 5 May 2022 at 8.50.09 AM Mr Lai messaged the Respondent; "Hi Joanna, Can you please send me employment or salary proof". This was the first time the Applicant requested proof of employment.
50. The Respondent sent him on 5 May 2022 at 8.53.53 AM a screenshot of her payslip stating, "My work e-mails them to me like that."
51. The payslip was dated October 2021. He was shown the production lodged with the Tribunal and confirmed this was what he had received.
52. On 17 May 2022 at 6.39.18 AM he requested an updated payslip. He said that he had not noticed the date on the earlier payslip. He said further that, "it looked a bit fake, eh I had that feeling but she'd said that was the way they were sent."
53. The Respondent had already moved into the Property by this stage.

54. Mr Lai was then referred to a second payslip lodged with the Tribunal which is dated April 2022 .He confirmed that the Respondent sent him that copy payslip on 17 May 2022 at 8.26.11 AM, stating, "My most recent".
55. Mr Lai said that this looked to him to be more legitimate. It included a company name and number.
56. He looked further into the payslip and it turned out that it was not correct. He contacted the e-mail address on the payslip, a Mr Cameron Taylor the CEO of the company on the payslip and received a response telling him that this was a fake payslip.
57. The payslip also contained an address "Blackies Quarry" Aberdeen. Mr Lai could not find that address either.
58. Mr Lai then made contact again with the Respondent and asked if she was working. She stated that she was at work and that she could not answer the telephone. He wanted to know when his rent payment would be arriving.
59. Mr Lai and his wife had discussed the position with the Respondent every day and night during this period. They were anxious about the Property having no tenant living there.
60. Mr Lai was then shown an e-mail dated 12 June 2022 from Universal Credit service. He said that he did not know what that was at the time, but now understood that benefit to be a subsidy/allowance form the Government for persons in unemployed circumstances. When he saw this he knew that the Respondent had lied and tricked him into letting her enter a lease for the Property.
61. He said that he had found it pretty easy in the past to source a tenant. He described the Property as newly refurbished/ close to the city centre/ furnished/ in a great area and with a parking space.
62. The deposit was one month's rent. His attempts in getting the rest of the deposit from the Respondent have been unsuccessful.
63. If he had been renting the Property to a student he would have asked for 6 months rent in advance and would have adopted a "different practice altogether."He would also have asked for a higher deposit.
64. He was adamant that when the Respondent said that she worked that he thought she meant paid employment.
65. He believed that as he had not signed the lease that there was no contract.
66. In relation to checks carried out by him as a landlord, he said that he normally did a little bit more checking. He believed the Respondent and he believed that the documents she sent were real. He said that he was a bit rushed at the time when he let the Respondent sign the tenancy agreement and take occupancy. He believed that she was in employment. He had never previously had a tenant in receipt of Universal Credit.

### ***Evidence of Ms Leva Klemkaite***

67. Ms Leva Klemkaite is the Applicant's wife.
68. She confirmed that the Applicant is the owner of the Property and that she lived there when she was at University in Aberdeen in 2013. She lived there for 3 years and moved out in 2016.
69. The Property was let out from 2018.

70. She married the Applicant in January 2017 and they have lived in Hong Kong since 2016.
71. She was closely involved in the Property being let out. Normally, her role was to look at prospective tenants, reply to messages, confirm viewings and let the Applicant deal with things at a later stage.
72. She has a "Gumtree" account where the Property is normally advertised for rent. In the past there have generally been 20-25 responses. Weekend viewings would be arranged with 5-6 viewings on a Saturday and a Sunday and then they would pick a tenant from these.
73. She watched the video of the advertisement and confirmed that this was the advertisement that was placed on her account 8 months ago.
74. She confirmed that the advertisement said that the Property was newly repainted and in the city centre. She said that there had never been a problem in letting the Property out and that she and her husband would never have it empty. The same day a tenant left, a new tenant would move in.
75. She said that there was a mutual agreement with herself and the Applicant that they wanted either a single person or a couple who were working as tenants. She was asked about the prospect of a student tenant given that the advertisement included students. Her position was that students were in the main employed and that she worked part-time as a student herself. The Property has never been let to anyone who was not in gainful employment.
76. On this occasion there were 10 people who viewed the Property over the Saturday and Sunday. All of them were working people.
77. She said that when she received messages in answer to her advertisement that people would give the best impression of themselves and say that they were working individuals. She did not reply to those messages where it was detailed that the interested party received assistance such as Housing Benefit.
78. Ms Klemkaite was referred to the exchange of messages that she had over the "Gumtree" platform with the Respondent. She said that the Respondent painted a picture of herself as a working individual and therefore she thought that she would be, "a good fit for us". She said that she was "Clean". The Respondent was presenting herself as someone that they were looking for. An ideal tenant in an ideal world.
79. When the Respondent said that she worked, Ms Klemkaite's interpretation of this was that the Respondent was in gainful full-time employment. She said that she, "sounded pretty presentable". The Respondent was in her 30s. She assumed that the Respondent would have no problem paying for the Property. She said that she had never come across someone who worked and wasn't paid in her life.
80. She discussed the Respondent with the Applicant and how the Respondent had described herself. Mr Lai had said to her that she sounded fine as she was single, working and wasn't an 18 year old.
81. Viewings were arranged for interested parties with half an hour in between them.
82. Ms Klemkaite and the Applicant had selected the Respondent as she was really pushy regarding the deposit and their previous tenant was moving out. She said that she and the Applicant could not "travel to the UK" and that they would require to quarantine at that time for 21 days. It had been quite a rushed decision for them to select the Respondent as a tenant and that she had, "ticked all the right boxes".
83. She agreed that she had exchanged a number of Whatsapp messages with the Respondent and that on 28 April 2022 she had forwarded the Respondent the

tenancy agreement. This was all done with the Applicant's approval and authority. He instructed her to send this over.

84. Normally, the tenancy would be signed on the date of entry, but the Respondent had asked for it in advance. Ms Klemkaite was unaware of the implications in doing so. The Respondent then proceeded to pay half of the deposit in the amount of £210. In Ms Klemkaite's eyes the tenancy had not been signed by the Applicant. She therefore did not believe that there would be an issue.
85. She did not think that the Respondent would be problematic as there was no need for her to pay the deposit when she did and she paid it so much earlier than required. Her promptness in paying the deposit was consistent with Ms Klemkaite's view that the Respondent was working and that she had cash.
86. On the day after the Respondent moved in, she forwarded a very old payslip. Ms Klemkaite believed that this was genuine but it was 9-10 months out of date. The Applicant asked for another one. It took the Respondent some time to send another one over.
87. Ms Klemkaite was shown a copy of the first payslip dated October 2021. She said that she did believe that to be genuine as it had an address and National Insurance Number. "It looked real", she said.
88. The second payslip which was received was shown to the witness. She said that there was no way that a pay-roll would release a payslip such as this. There was no reference to PAYE/NI. It was after this was received that the Applicant carried out some enquiries. She said that this was very much a team effort and was discussed by them both.
89. She is unaware if the Respondent is even living in the Property still. She said that the Respondent has not shown up to this Hearing or the previous 2 CMDs. She believes that the Respondent knows the process and that she is waiting for notice to leave and then will leave the Property.
90. Her advertisement on "Gumtree" was active for 30 days and then was disabled. The Respondent had contacted them in April 2022 and by the time that she was in the Property the advert was inactive.

## **Closing Submissions**

91. Mr Taylor reiterated that this was an unusual case. He submitted that where a contract has been entered into by fraudulent representations that it is voidable, and in that regard referred to Professor Robert Rennie's book, "Leases" (First Edition-2015) at Paragraph 4/08 where he states;-  
*"In general terms if a party has been induced to enter into a lease as a result of a fraudulent misrepresentation it is voidable and liable to reduction."*  
(The footnote to this refers to Rankine, *The Law of Leases in Scotland* (1916) at page 95 and Paton and Cameron, *The Law of Landlord and Tenant* (1967))
92. He then referred to Professor William McBryde's, "The Law of Contract in Scotland" (Second Edition-2001) at Paragraphs 14-51;  
*"The fraud must induce the contract. There must be reliance on the fraud, although it need not be the sole cause of the contract. What is clear is that it is not enough that fraud precedes a contract."*  
and Paragraph 14-54;  
*"It is sufficient that the fraud induces the contract. The various classes of error and the difficulties of the meaning of "essential" or "material" or "substantial" which infuse the law on error are not part of the law on fraud. Fraud is still relevant even if*



*it's effect is to induce non-essential error. It is one of the characteristics of fraud in many European systems that it is not necessary to show that the fraud was in an important matter. If the trickery in any way influenced the decision to enter into the contract that is enough."*

93. He submitted that ordinarily, the Applicant would complete the tenancy agreement and allow access at the same stage. He accepted that contrary to the position that the Applicant adopted in his evidence, that he conceded that having received the tenancy agreement signed by the Respondent, and allowed her access to the Property, that the contract was completed at that stage.
94. However, he submitted that the Respondent had stated that she was working. The Applicant is entitled to rely on the connotations of the everyday usage of the word and the most common interpretation thereof. It was not stretching language for the Applicant to believe that the Respondent was in paid employment.
95. This could all be capable of an alternative explanation but the Respondent has not offered an alternative explanation. She says in her messages to the Applicant's wife that she is an experienced renter and as such it would not be stretching judicial knowledge to infer that she would be more likely to gain a tenancy if employed than not.
96. Before she moved in, the Respondent produced a payslip which does not appear to be a genuine document. None the less it is clear that the second payslip produced, is a complete fabrication by the Respondent. The deductions are not as a UK payslip should be. The address on the payslip does not exist. The company detailed on the second payslip AGR have as CEO a Mr Cameron Taylor who responded to the Applicant's query. Mr Cameron confirmed that the payslip was not genuine. In some respects this is, "after the fact."
97. In this case, the Respondent has put forward the premise that she is working. The Applicant has entered into the contract based on that comment and allowed the Respondent to become a tenant. She would not have been, "in the running" to become a tenant if she had said that she was not working. That initial lie set the whole action which was to follow in place. Had she not lied, the Applicant would not have entered the contract. He found out 2 days too late that this was not the case. Stage 1, he said, was to have the contract reduced. There is a completed contract as the Applicant has allowed the Respondent to take entry. Accordingly reduction of the contract is sought.
98. Mr Taylor said that Stage 2 was the issue of damages. The Applicant is in a situation where he has been losing £420 per month since 15 May 2022. He has not been in a position where he could accept rent from the Respondent. He has therefore not been deemed to have accepted the Respondent as a tenant. He has clearly sustained a loss.
99. Mr Taylor then submitted that with regard to violent profits, that they were not something generally arising in a Private Residential Tenancy but that the issue of violent profits do arise if there is a situation where there is an occupation of a property in bad faith. The Respondent in this case, he submitted has refused to engage in the matters before the Tribunal. She has had plenty to say regarding other matters, such as she detailed in her e-mails to the Tribunal, but nothing regarding the matter in hand. There have been 2 CMDs. The Respondent has chosen not to engage. He submitted that violent profits are equivalent to twice the rental that a landlord would normally expect.
100. Mr Taylor referred to Adrian Stalker's, "*Evictions in Scotland*" (Second Edition -2021) at pages 504-505;

*Violent profits may be sought by the proprietor of subjects against any person, including the tenant, who occupies the subjects illegally. They may therefore be payable by a tenant who continues to occupy a property after the lease has been lawfully terminated. In residential tenancies subject to the 1988, 2001 and 2016 Acts, there is no scope for such a claim, because the tenant continues to have a right to occupy the property, until the court's order terminating the statutory tenancy has effect. However, it is still possible to seek violent profits in other cases.*

*At common law, violent profits are double the rent that was payable under the tenancy. However the pursuer requires to show, "bad faith" on the part of the defender, i.e. that he continued in occupation in circumstances in which he clearly had no title to do so. Where possession has been continued during a litigation regarding the title of the possessor, it is sufficient to support the possessor's plea of good faith that he had probable cause in the litigation. Accordingly, where there is genuine dispute between the parties as to whether the defender is entitled to remain in occupation, a claim for violent profits will not be upheld.*

101. He suggested that the Applicant would be entitled to an award of violent profits in situations such as this. He submitted that the Respondent had not acted in good faith as she had not sought to engage in the Tribunal process. After 2 CMDs and a Hearing, no one is any the wiser as to what her true position is. In his submission, the Respondent has falsely represented that she is in employment to secure this tenancy.
102. Mr Taylor concluded by saying that the case turns on a narrow point, a small evidential point. He submitted that in the absence of a contrary explanation that the Tribunal can accept the Applicant's evidence which is not challenged regarding why he took the Respondent as a tenant and this was due to the fact that she held herself out as being in employment, whereas in truth she was not.

### **Findings in Fact**

103. The Applicant is the owner of the Property.
104. The Applicant advertised the Property for rent by posting an advertisement on his wife's Gumtree account.
105. The Respondent replied to this advertisement on 23 April 2022 and stated initially that she wished to arrange a viewing.
106. The Respondent subsequently indicated that she was very keen to take on the tenancy.
107. The Respondent confirmed that she was looking for a long term let.
108. The Respondent stated that she was working.
109. The Respondent paid the Applicant a half share of the deposit on 30 April 2022
110. The Respondent requested a copy of the tenancy agreement on 28 April 2022.
111. The Respondent signed a copy of the tenancy agreement on 28 April 2022 and returned this to the Applicant.
112. The Respondent took entry on 14 May 2022. .
113. The tenancy agreement provides a commencement date of 15 May 2022.
114. The rent due in terms of the tenancy agreement is £420 per calendar month.

115. No further payments have been received by the Applicant from the Respondent.
116. On 5 May 2022 the Applicant requested that the Respondent provide proof of employment and salary in line with his usual practice.
117. The Respondent provided a first payslip to the Applicant on 5 May 2022 dated 2 October 2021. This payslip provided no details of the employers and included the words "Sample Only".
118. On 17 May 2022 the Applicant queried this payslip and requested a more up to date salary slip.
119. On 17 May 2022 the Respondent provided a second payslip bearing to have been issued by "AGR". This payslip included Cameron Taylor as the company Director authorising the salary payment.
120. The second payslip also reported that AGR were based at Blackies Quay, Aberdeen.
121. The Applicant contacted Cameron Taylor of AGR believing that there were anomalies in the payslip.
122. The Applicant received a return e-mail from Cameron Taylor, the chief operating officer, informing him that the payslip was not genuine and they had no knowledge of the Respondent.
123. On 12 June 2022 the Respondent forwarded an e-mail to the Applicant's representative confirming that she was in receipt of Universal Credit for the assessment period 7 May 2022 to 6 June 2022, including a payment for housing of £420 per month.
124. The Respondent induced the Applicant to enter into a tenancy agreement with her by fraudulently misrepresenting the position that she was working at the time the contract was entered into.
125. The Applicant relied on this factor before deciding to enter into the tenancy agreement with the Respondent.
126. The Respondent compounded her misrepresentation by forwarding two payslips to the Applicant. One was 6 months old and the latter one had been fabricated by her entirely.
127. The Applicant is entitled to a reduction of the tenancy agreement based on the Respondent's fraudulent misrepresentation.
128. Due to the fact that the Respondent entered into the tenancy agreement and did not pay any rent the Applicant has suffered economic loss.
129. The economic loss that the Applicant has suffered is equivalent to not receiving rent from the date of the commencement of the tenancy agreement to the date of the Hearing.
130. The economic loss suffered by the Applicant amounts to, £ 3,630.97.

### **Reasons for Decision**

131. The Tribunal firstly considered its locus in hearing the application. Since May 2015 it has been possible to raise an action challenging the existence of a lease in the Sheriff Court by way of an action for reduction. The Private Housing (Tenancies) (Scotland) Act 2016 sets out at section 71;

71 First-tier Tribunal's jurisdiction

(1) In relation to civil proceedings arising from a private residential tenancy—

(a) the First-tier Tribunal has whatever competence and jurisdiction a sheriff would have but for paragraph

(b),

(b) a sheriff does not have competence or jurisdiction.

(2) For the purposes of subsection (1), civil proceedings are any proceedings other than—

(a) the prosecution of a criminal offence,

(b) any proceedings related to such a prosecution.

132. The Tribunal also considered the decision of Sheriff F McCartney in the case *SW V Chestnutt Skeoch Limited (UTS/AP/19/0032)* and concluded that the Tribunal does have jurisdiction to hear this application.

133. The Tribunal accepted the evidence of the Applicant and his wife that the misrepresentation of the Respondent that she was in gainful employment was an inducing factor which was substantial in their determining to enter into a tenancy agreement in respect of the Property with the Respondent.

134. In particular the Tribunal found the Applicant's wife Ms Klemkaite to be a compelling witness. It was clear that the Applicant and his wife were somewhat naive in that the Applicant had acted as a direct landlord from a considerable distance and had not carried out appropriate landlord checks on the Respondent's employment status prior to the tenancy agreement being signed. However, notwithstanding this the Tribunal accepted the position of the Applicant and his wife that had they been aware of the true position, that the Respondent was not in gainful employment, that they would not have entered into an agreement with her.

135. The misrepresentation was material and not trivial or negligible.

136. The misrepresentation produced an error in the mind of the Applicant that the Respondent was in employment.

137. This erroneous belief was a material factor which persuaded the Applicant to enter into the tenancy agreement with the Respondent.

138. The fraudulent misrepresentation was perpetuated by the Respondent when she forwarded a very old payslip in the first instance and thereafter a fabricated payslip.

139. The fact that the Applicant did not sign the tenancy agreement, and has sought the remedy of reduction of the tenancy agreement reasonably quickly, was another factor which adds weight to the Applicant's adopted position.

140. Whilst making no determination on the propriety or otherwise of the Applicant's position on rejecting prospective tenants who were reliant on benefits/ were unemployed, this application was about a misrepresentation made by the Respondent, in giving fraudulent information to the Applicant inducing him to enter a tenancy agreement with her. The Tribunal accepted the Applicant's position in that respect.

141. The test regarding whether to grant a reduction of a tenancy agreement remains a matter for the Tribunal's discretion looking at whether substantial justice favours the granting of the reduction in the particular circumstances of the case. In this case the Applicant has relied on fraudulent representation made by

the Respondent that she was in employment in order to enter into the tenancy agreement. He would not have entered into this contract with her had he known the true position. The Respondent carried on this deceit by providing firstly a very old payslip 6 months out of date, and thereafter a fabricated payslip. She has paid no rent since taking entry. She has not defended these proceedings. In all of the circumstances it is reasonable and fair that the tenancy agreement contract is reduced.

142. Having determined that a reduction of the tenancy agreement was appropriate the Tribunal addressed the issue of economic loss. The Applicant has received no rent since the tenancy agreement commenced on 15 May 2022 . The rent due in terms of the tenancy agreement is £420 per calendar month. The Tribunal is of the view that the Applicant is accordingly entitled to be compensated by the Respondent in the amount of £3,630.97 which is an amount equivalent to the rent that the Applicant would have received from 15 May 2022 to 3 February 2023 ( 8 months @£420 and for the period from 15 January 2023 to 3 February 2023 ,20 days as opposed to 31 days i.e.  $20/31 \times £420$ , making a total loss of £3630.97
143. In respect of the violent profits element of the claim the Tribunal's view is that this does not arise as it has not been included in the application submitted to the Tribunal and served on the Respondent and the Respondent has had no fair notice of this element of the claim. In the circumstances no award for violent profits was considered appropriate for consideration by the Tribunal.

**NOTE: This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to tribunal members in relation to any future proceedings on unresolved issues.**

## 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.

# Y McKenna

Yvonne McKenna

3 February 2023

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Legal Member/Chair

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Date