



**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/23/3078

Re: Property at 44B Queen Mary Avenue, Glasgow, G42 8DT (“the Property”)

Parties:

Mr Mian Mohammed Asif, Asif Group of Companies, Asif Centre 31-32 Multan Road, Chaburi Lahore, 54500, Pakistan (“the Applicant”)

Ms Louise Stewart, 44B Queen Mary Avenue, Glasgow, G42 8DT (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it would grant the application to rectify clause 2 and clause 4 of the tenancy agreement. Clause 2 shall be rectified as follows the reference to monthly rental as “£.800” is delete and there shall be inserted therefor monthly rental of “£525.00”. Clause 4 is rectified as follows the date reference to the renewal of the lease to be made on “28th of March 2016” shall be delete and there shall be inserted therefor the renewal of lease to be made on “29th of March 2016”.

BACKGROUND

1. This is an application in terms of rule 70 of the Tribunal rules of procedure. It was first lodged with the Tribunal on 5th September 2023 and accepted by the Tribunal on 15th September 2023.

2. A case management discussion was held on 8th December 2023 reference is made to the terms of that case management discussion note.
3. At that case management discussion was Ms McFadyen of Mellicks solicitors who attended on behalf of the Applicant and the Respondent Ms Louise Stewart who attended and represented herself.
4. The tribunal had sight of the application, a tenancy agreement, a paper apart a series of emails, bank statements a rent statement and an updated rent statement. Ms Stewart had sight of all of these documents.
5. The applicant's agent advised that this was an application for rectification of the terms of a tenancy agreement. The application related to an assured tenancy, in terms of section 12 of the Housing (Scotland) Act 1988.
6. After hearing parties, the tribunal continued the matter to a second case management discussion and issued a direction regarding further procedure. Reference is made to the terms of the notice of direction, I would note that in summary th tribunal wanted to be addressed on whether the tribunal had jurisdiction to determine an application for rectification; and further did the respondent object to the application.
7. The second case management discussion took place on 12 March 2024. At the second case management discussion Ms McFadyen of Mellicks solicitors, the Applicant's agent and the Respondent both attended.

DISCUSSION

8. Both parties responded to the terms of the direction. The applicant's agent made submissions setting out why she considered that the tribunal had jurisdiction to hear this application and further why she was entitled to the order sought.
9. The applicant referred to Section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 which provides for rectification of documents such as the lease. To establish a case the applicant must demonstrate that there is a document which when made was intended to express, or give effect to, an agreement; and that the common intentions of the parties to that agreement are not accurately expressed in that document. What is said to be the underlying agreement must have been made independently of the document intended to embody or give effect to it and made before or at the same time as the document; and must demonstrate consensus between the parties.

10. She submitted that the underlying agreement was that the rent would be £525. This is accepted by the tenant and is homologated by the parties' actions where rent was paid and accepted at that level. The level stated in the lease was a typographical error and did not reflect the parties' agreement and should be rectified.
11. The date in clause 4 is a typographical error. Clause 1 states the duration of the tenancy. Clause 4 contradicts clause 1 and would reduce the tenancy by a day each year. That was not what the parties intended. The parties intended that the lease would be for a year as clearly stated in clause 1 and the rectification sought in clause 4 is to remove the contradiction contained therein and to reflect the agreement clearly stated by the parties earlier in the tenancy agreement.
12. In terms of the issue of jurisdiction she referred to Section 16 of the Housing (Scotland) Act 2014. She submitted that case law had determined that this section should be interpreted widely. She referred to the case of *Anderson & Stark* [2019] UT 48 in support of that proposition.
13. The respondent confirmed that she had no objection to the applicant's application to rectify clause 2 (rent amount) or clause 4 (date of renewal).

FINIDNGS IN FACT AND LAW

14. The tribunal makes the following findings in fact:
15. The property is 44-B Queen Mary Avenue, Glasgow.
16. The landlord and applicant are Mr Asif.
17. The respondent is Louise Stewart.
18. The parties had entered into a tenancy agreement for the property with effect from the 29th of March 2015.
19. Clause 2 of the agreement related to the monthly rental amount and stated monthly rental is "£.800", which is an amount which is an eighth of a penny.
20. The agreed rental between the parties per month was £525. Evidence was provided showing payment of £525 having been made by the tenant to the landlord. A rent statement showing payment of £525 was produced.
21. Clause 2 of the tenancy agreement contained an error as to the amount of rent payable.
22. Clause 1 of the tenancy agreement stated that the lease would commence on the 29th of March 2015 and terminate on the 28th of March 2016. Clause 1 said that "renewal of lease to be made at the end of the lease". Clause 4 of the agreement stated that

“notice of termination on either side to be given in writing four weeks prior to vacating date, otherwise renewal of lease to be made on 28 March 2016”. The renewal date was also therefore the termination date.

23. The landlord and tenant had had intended that the renewal would take place on 29 March 2016.
24. The applicant sought to rectify clauses 2 and 4 of the tenancy agreement to show in clause 2 that the actual rent was £525 per month; and in clause 4 that the renewal date was 29 March 2016.
25. The respondent had no objection clauses 2 or 4 being rectified as sought by the applicant.

26. The tribunal finds in law that: -

27. Clause 2 of the tenancy agreement failed to express accurately the common intention of the parties to the agreement at the date when it was made and therefore clause 2 shall be rectified as follows the reference to monthly rental as “£.800” is delete and there shall be inserted therefor the monthly rental of “£525.00”.
28. Clause 4 of the tenancy agreement failed to express accurately the common intention of the parties to the agreement at the date when it was made and therefore Clause 4 of the tenancy agreement is rectified as follows the date reference to the renewal of the lease to be made on “28th of March 2016” shall be delete and there shall be inserted therefor the renewal of lease to be made on “29th of March 2016”.

REASONS FOR DECISION

29. Section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act. 1985 *deals with Rectification of defectively expressed documents.*

(1) Subject to section 9 of this Act, where the court is satisfied, on an application made to it, that—

(a) a document intended to express or to give effect to an agreement fails to express accurately the common intention of the parties to the agreement at the date when it was made; or

(b) a document intended to create, transfer, vary or renounce a right, not being a document falling within paragraph (a) above, fails to express accurately the intention of the grantor of the document at the date when it was executed,

it may order the document to be rectified in any manner that it may specify in order to give effect to that intention.

(2) For the purposes of subsection (1) above, the court shall be entitled to have regard to all relevant evidence, whether written or oral.

(3) ...

...

(4) Subject to sections 8A and 9(4)] of this Act, a document ordered to be rectified under this section shall have effect as if it had always been so rectified.

...

(9) In this section and section 9 of this Act “the court” means the Court of Session or the sheriff.

30. Section 16 of the Housing (Scotland) Act 2014 deals with the *Transfer of sheriff's jurisdiction to First-tier Tribunal* and it provides that: -

Section 16 Regulated and assured tenancies etc.

The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal-

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

Part 1 of schedule 1 makes minor and consequential amendments.

31. Having regard to the first question does the first-tier tribunal have jurisdiction to determine actions of rectification of tenancy agreements. There are several cases from the upper tribunal and sheriff court which have now considered this question.
32. The more recent case of *SW v Chesnutt Skeoch Limited UTS/AP/19/0032* considered whether the FtT had jurisdiction to consider a reduction of a tenancy agreement, and at paragraph 22 Sheriff McCartney advised that:

"22. Sheriff Ross, sitting as an Upper Tribunal judge, considered the question of what "arising from" meant in the context of a private tenancy (Anderson v First-tier Tribunal for Scotland Housing and Property Chamber [2019] UT 48). Whilst his decision rests on section 71 of the 2016 Act, that wording is similar to the wording in [section 16](#), which governs the jurisdiction in the current case. Section 71 provides the FtT with jurisdiction for a private residential tenancy where the dispute is "in relation to civil proceedings arising from a private residential tenancy" (section 71 of the 2016 Act). Section 16 of the 2016 Act, relative to the current application, the FtT has the "functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies" (section 16 (1) of the 2016 Act). That includes an assured tenancy. Sheriff Ross considered it was a matter of fact and degree in each case and therefore a mixed question of fact and law.

23. Sheriff Jamieson considered that the question of what the jurisdiction of the FtT was could be usefully considered by reference to the ordinary jurisdiction of the sheriff, rather than any special or particular statutory functions conferred on the sheriff (Parker v Inkersall Investments Ltd [2018] SC DUM 66).

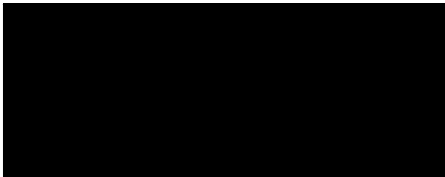
24. It seems to me, that if a valid application had been made to the FtT, then it is arguable that the FtT had jurisdiction to deal with it. The action for reduction can only arise following a lease being entered into. The wording of section 16 of the 2016 Act is potentially wide enough to cover a wide jurisdiction. It transfers the functions and jurisdictions of the Sheriff in relation to assured tenancies to the FtT (section 16(1)). Parliament expressly limited the FtT's jurisdiction in relation to criminal matters (section 16 (2)) but did not seek to place other limitations on the FtT. As Sheriff Ross noted,

the "natural and ordinary effect of the words "arising from" is unrestricted and imprecise, and invites a wide, inclusive approach It tends to show that the legislature intended the FtT to deal with all PRT- related events, to the exclusion of the sheriff court, and not just the core lease." (Anderson v First-tier Tribunal for Scotland Housing and Property Chamber [2019] UT 48 [2019] UT 48 para [14])."

33. Considering Sheriff McCartney reviews the two cases which the applicant's agent had referred me to and his own assessment that it was arguable that the FtT had jurisdiction to deal with an action for reduction where it arose out of a tenancy agreement, then I consider that the FtT also has jurisdiction therefore to deal with an action for rectification, where, as in this action, it arises out of an assured tenancy agreement. An assured tenancy is one of the types of tenancy agreements provided for in section 16 of the 2014 Act. I consider that section 16 transfers the jurisdiction of the sheriff in relation to this application. I am content that I have jurisdiction to deal with this application.
34. In terms of the two matters to be rectified. I find that there was evidence that the parties had agreed that the rent payable was £525. This appears to have been the intention prior to the parties entering into the agreement. There was also evidence that the parties had paid and rent of £525 thereafter. It appears to me that the party's intention had therefore been that the reference to monthly rent in the lease should have been £525.
35. In terms of the second issue. Clause 1 refers to the commencement and termination date. I consider that there was typographical error in Clause 4. The respondent did not object to the rectification. While it is not so clear if parties discussed this point in detail before the tenancy agreement was entered into, it appears clear enough from Clause 1 what the start and end date of the tenancy agreement were and that the tenancy agreement was therefore to last for one year. Clause 4 as currently drafted deals with termination, and does not make sense if the renewal date is also the termination date. It appears to me that this cannot be correct and the parties' intention must have been that the renewal date would be the 29th of March 2016 if the end date was 28 March 2016. Allowing rectification of clause 4 would provide parties with certainty as to the end date and the renewal date. I am also prepared to rectify Clause 4.

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.



12 March 2024

Legal Member/Chair

Date