



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)**

**Chamber Ref: FTS/HPC/TE/24/0537**

**Property at 3/1, 43 Carnarvon St, Glasgow, G3 6HP (“the Property”)**

**Parties:**

**Mr Zekai Zheng, 406H Canvas, 47 Kyle Street, Glasgow, G4 0JQ (“the Applicant”)**

**Mr Shi Tong Lin, UNKNOWN, UNKNOWN (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member) and Helen Barclay (Ordinary Member)**

**Decision – in absence of the Respondent**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be refused.**

**Background**

1. The Applicant seeks an order for payment in terms of Section 16(1) of the 2016 Act. The application states that the Respondent has failed to comply with Section 11 of the 2016 Act. A tenancy agreement, text messages and a copy of a letter to the Respondent were lodged with the application.
2. A copy of the application was served on the Respondent by Sheriff Officer, and the parties were advised that a CMD would take place on by telephone conference call on 26 August 2024 at 2pm.
3. The CMD took place on 26 August 2024. The Applicant participated. The Respondent did not participate and was not represented.
4. The Tribunal noted that the Applicant’s submissions refer to a number of other tenancy issues including repairing standard complaints and an alleged failure by the Respondent to lodge the tenancy deposit in an approved scheme. The Applicant was advised that the only matter before the Tribunal was the alleged failure by the Respondent to provide the Applicant with specified information in

terms of Section 11 of the 2016 Act.

5. In response to questions from the Tribunal, Mr Zheng said that the tenancy was continuing. He said that it started on 1 September 2023, when he paid 12 months' rent in advance. When he took advice, he discovered that the tenancy agreement was invalid as it is an assured tenancy agreement which indicates that there is a fixed term of 12 months to 31 August 2024. Furthermore, he was advised that he should not have been asked for 12 months rent in advance. He said that he had not lived at the property since December 2023 and in March 2024 there were discussions with the landlord about ending the tenancy. He said that he was willing to do that if the Respondent repaid the rent for the remaining six months. The Respondent agreed to do this but did not repay the money. Mr Zheng said that although he had told the Respondent in writing that he wished to terminate the tenancy it was conditional upon repayment of the rent, so he believes that the tenancy has not ended. The Tribunal noted that the application was accepted on 12 April 2024 and was "made" in terms of Rule 107 of the Tribunal Procedure Rules on 16 March 2024.
6. The Tribunal noted that the Applicant had not submitted a notice in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 ("the 2017 Regulations") with the application. The Legal Member of the Tribunal stated that the application might be incompetent if the Applicant had not complied with the 2017 Regulations and Sections 16 and 17 of the 2016 Act. Following discussion, the Tribunal determined that the application should be continued to a further CMD. This would allow the Applicant the opportunity to take advice and to either provide submissions as to the competency of the application or withdraw it.
7. Following the CMD the Tribunal issued a detailed note regarding the discussion at the CMD and the relevant legislation and regulations. The Applicant was notified that the following matters would be considered at continued CMD:-
  - (a) Did the Applicant give the Respondent the notice required by Section 16(3) of the Act before making the application?
  - (b) Was the tenancy ongoing at the date the application was made?
8. The CMD note was issued to the parties. The letter sent to the Respondent was returned by Royal Mail marked "addressee unknown". In the absence of a valid, current address for the Respondent, the Tribunal determined that the application would proceed by advertisement.
9. The parties were notified that a further CMD would take place on 19 December 2024 at 10am. On 18 December 2024, in response to an enquiry from the Tribunal, the Applicant confirmed that he intended to participate. He stated that after consulting with CAB and Shelter, this being his first Tribunal application, the process was handled by two experienced CAB advisors. They believed, due to the threatening message sent by the landlord that he would see the Applicant in court and the failure by the landlord to respond during the application process, that the formal letter issued by the Applicant was sufficient notice. He

also confirmed that the tenancy was ongoing at the date the application was submitted.

### **Summary of Discussion at CMD**

10. The Legal Member explained that the Respondent had been notified by advertisement on the Chamber website. Mr Zheng said that he had obtained the address from Landlord Registration as this is what he had been advised to do.
11. In response to questions about the tenancy, Mr Zheng said that he had paid 12 months rent in advance for a fixed term 12 month lease. The tenancy ended at the end of August 2024. He did not give unconditional notice to terminate the tenancy at an earlier date and was not re-imbursed for any of the rent he had paid in advance.
12. In response to questions about notification to the landlord in terms of section 16(3) of the 2016 Act, Mr Zheng referred to his email of 18 December 2024 and to the letter lodged with the application. He said that he had not known that there was a form to download and issue at the time. He had help with the process from experienced advisors. He was told that the threat from the landlord "see you in court" established that he wanted the matter to go to court. The CAB helped him with the formal letter which he sent by "WeChat" and by post. He thought that this was enough. It was his first experience of the tribunal process. He did not know about the form and the CAB did not tell him about it. In response to a question from the Tribunal, Mr Zheng said that the property had not been advertised by an agency. He had received a late offer of a university place and had little time to find accommodation. He found it online and dealt with the landlord direct.

### **Findings in Fact**

13. The Applicant is the former tenant of the property. His tenancy ended on 31 August 2024.
14. The Respondent is the owner and landlord of the property.
15. The tenancy agreement signed by the parties made provision for a fixed term.
16. The tenancy started on 1 September 2023 and was a private residential tenancy in terms of the 2016 Act.
17. The Respondent did not give the Applicant the information specified in Regulation 3 of Private Residential Tenancies (Statutory Terms) (Scotland) Regulations 2017.

18. The Applicant sent a letter and messages to the Respondent stating that he had been given the wrong type of tenancy and stating that the Respondent would be reported to the Tribunal if this was not corrected.
19. The Applicant did not issue the Respondent with the Notice prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.

### **Reasons for Decision**

20. The Applicant seeks an order in terms of Sections 16(1) and 11(1) of the 2016 Act. He seeks a payment order in terms of Section 16(2) of the Act on the grounds that the Respondent has failed to provide him with information in terms of Regulation 3 of the Private Residential Tenancies (Statutory Terms) (Scotland) Regulations 2017. The information in question is the Statutory Terms Supporting Notes which include information about the rules for terminating a tenancy.

### **The tenancy**

21. The Applicant lodged a document with is entitled “Long Assured tenancy agreement” with the application. It is essentially a short assured tenancy agreement in the format usually used by landlords for this type of tenancy prior to 1 December 1989. The agreement was signed by both the landlord and tenant on 2 September 2023. It makes provision for a fixed term of one year from 1 September 2023 to 31 August 2024.
22. The Tribunal is satisfied that the Applicant’s tenancy is not an assured tenancy under the Housing (Scotland) Act 1988 because Schedule 5 of the 2016 Act stipulates that no new assured tenancies could be created after the 2016 Act came into force, on 1 December 2017. Based on the documents lodged and the information provided at the CMDs, the Tribunal is satisfied that the Applicant’s tenancy was a private residential tenancy in terms of the 2016 Act. This being the case, the fixed term was not enforceable. However, as the Applicant paid 12 months rent in advance, and did not give or receive notice to terminate the tenancy prior to the date specified in the agreement, it appears that the tenancy did not terminate until 31 August 2024.
23. Section 16(3)(a) of the 2016 Act states that “ An application under subsection (1) (a) may be made only during the course of the tenancy in question”. The application was lodged with the Tribunal on 1 February 2024. Following a request for further information and a response, the Notice of acceptance was issued on 12 April 2024 and confirmed that the application was deemed to have been “made” in terms of Rule 5 of the Procedure Rules on 16 March 2024. In the absence of any evidence to the contrary, the Tribunal is satisfied that the Applicant was the tenant of the property at the date the application was made. He has therefore complied with Section 16(3)(a) of the 2016 Act.

### **The notification of the application in terms of Section 16(3).**

24. The Applicant lodged a letter with the application. It is addressed to the Respondent and signed by the Applicant. It is dated 28 January 2024. There are four paragraphs in the letter. Paragraphs 2, 3 and 4 are not relevant to the application as they concern the payment of 12 months' rent in advance, the failure by the landlord to comply with the Tenancy Deposit Regulations and the Repairing Standard. Paragraph 1 states that the "assured tenancy agreement that you have given me was the wrong tenancy agreement... Shelter Scotland has notified me that the landlord should issue me with a private residential agreement with no fixed term". The letter gives the landlord 7 days to "correct all these issues" or he would be reported to the Tribunal. The Applicant also lodged a series of text or WhatsApp messages, but these did not provide any additional information to the Respondent.

25. The Tribunal noted that the Applicant has not submitted a notice in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 ("the 2017 Regulations") with the application. The relevant statutory provisions are as follows:-

- (a) Section 16(3) of the 2016 Act states that an application under Section 16(1) - "(c) may not be made unless the tenant has given the landlord notice of the tenant's intention to make the application, and the notice period described in section 17 has expired".
- (b) Section 17 makes provision for a notice period of 28 days.
- (c) Section 17(3) stipulates that " A notice of a tenant's intention to make an application under section 14(1) and 16(1) must fulfil any requirement prescribed by the Scottish Ministers in regulations."
- (d) Regulation 2 of the 2017 Regulations states, "(2) A notice under section 16(3) (First-tier Tribunal's power to sanction failure to provide information) of the Act of the tenant's intention to make an application to the First-tier Tribunal under section 16(1) of the Act **must** be in the form set out in schedule 1.
- (e) Schedule 1 of the 2017 Regulations is headed (in bold and capitals) "TENANTS NOTIFICATION TO A LANDLORD UNDER SECTION 14(3) OR 16(3) OF THE PRIVATE HOUSING TENANCIES (SCOTLAND) ACT 2016 (THE ACT) OF THE TENANTS INTENTION TO MAKE AN APPLICATION TO THE FIRST TIER TRIBUNAL FOR SCOTLAND (THE TRIBUNAL) IN CONNECTION WITH A FAILURE TO SUPPLY IN WRITING ALL TENANCY TERMS AND/OR OTHER SPECIFIED INFORMATION". The Notice goes on to tell the landlord that the tenant intends to apply to the Tribunal because the landlord has failed to provide a copy of the written terms of the tenancy and/or other specified information and that the tenant is seeking a payment order of up to six months' rent. The notice then advises landlords that the tenant cannot make the application if the required information is given to the tenant by a specified date. The remainder of the notice must be completed with the landlord's name and address, the tenant's name and the address of the let

property. The notice also must indicate whether the application is to be made in terms of section 10 or 11 of the Act.

- (f) Section 73 of the Interpretation and Legislative Reform (Scotland) Act 2010 states, “Where a form is prescribed in or under an Act of the Scottish Parliament, a form that differs from the prescribed form is not invalid unless the difference materially affects the effect of the form or is misleading.”

26. The Tribunal is satisfied that the application is not competent as the Applicant has not complied with the relevant provisions of the legislation and the Regulations. The Notice issued to the Respondent is not in the prescribed format and does not give the 28 days notice specified in Section 17. In fact, the letter was issued to the Respondent on 28 January 2024 and stated that the Respondent had 7 days to address the issues raised. The application was submitted 4 days later, on 1 February 2024.

27. The Tribunal considered whether the terms of Section 73 of the 2010 applied and noted that the document issued to the Respondent does not include any of the following information specified in the prescribed form;-

- (a) The address of the property.
- (b) The fact that landlord has failed to provide specified information in terms of Section 11 of the 2016 Act. The letter submitted only states that the wrong type of tenancy agreement has been given.
- (c) The fact that the tenant is seeking a payment order and that the Tribunal can make an award of up to 6 months’ rent.
- (d) The fact that the tenant cannot make the application to the Tribunal if the landlord provides the information by the date specified in part 2 of the notice
- (e) The date after which an application to the Tribunal may be made, being the expiry of the 28 day notice period.

28. The letter issued by the Applicant only advised the Respondent that the wrong tenancy agreement had been given and that he would be “reported” to the Tribunal if he did not correct the issues raised in the letter. The Tribunal is satisfied that the missing information is essential to give the Respondent proper notice of the application and that the absence of this information “materially affects the effect of the notice”. This being the case, Section 73 does not apply, and the notice issued to the Respondent was invalid.

29. The Applicant sought to persuade the Tribunal that they should have regard to his inexperience in relation to the tribunal process and to the fact that he was advised by the CAB and Shelter. He also referred to the messages from the landlord when he said that he would see the Applicant in court. However, the Tribunal is not satisfied that these considerations are relevant. The application is incompetent and cannot succeed. The Tribunal does not have the discretion to disregard the legislative requirements of the process.

## **Decision**

**30.** The Tribunal determines that the application should be refused.

## **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.**

# **J Bonnar**

**Josephine Bonnar, Legal Member**

**19 December 2024**