



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/24/0821

Re: Property at Flat 1/2, 95 Ruchill Street, Glasgow, G20 9QN (“the Property”)

Parties:

Miss Moyosola Agbola, Flat 1/2, 95 Ruchill Street, Glasgow, G20 9QN (“the Applicant”)

Mr Colum Devlin, 14 Jordanhill Drive, Glasgow, G13 1SA (“the Respondent”)

Tribunal Members:

Andrew Upton (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent is liable to make payment to the Applicant in the sum of FIVE HUNDRED POUNDS (£500.00) STERLING.

Findings in Fact

1. The Applicant was the tenant, and the Respondent the landlord, of the Property under and in terms of a Private Residential Tenancy Agreement which commenced on 11 June 2021 (“the Tenancy Agreement”).
2. The rent payable by the Applicant to the Respondent from January 2024 until the Tenancy Agreement ended was £435.
3. The Property is a two-bedroom flat with shared living room and kitchen facilities. The Applicant had exclusive use of an en-suite bedroom in the Property. The other bedroom, together with the main bathroom in the Property, was let to Lydia Jilantikiri during the Applicant’s tenancy (“Lydia”).

4. In terms of clause 11 of the Tenancy Agreement, the Applicant was prohibited from subletting the Property, or any part of it, or from taking in a lodger, or from assigning the Tenancy Agreement, or from allowing another person to live at the Property without the Respondent's written permission.
5. In terms of clause 12 of the Tenancy Agreement, the Applicant was under contractual obligation to write to the Respondent if a person over the age of 16 was to live at the Property as their only or main home.
6. On or around 7 September 2023, the Applicant's sister, Morolake Agbola ("Morolake"), entered the UK on a student visa to study for a masters degree at the University of Glasgow.
7. Morolake initially moved into the Property with the Applicant. It was intended to be a short-term living arrangement which Morolake found suitable accommodation. The Applicant did not write to the Respondent to advise of this arrangement, nor did she seek his permission.
8. In or around January 2024, the Respondent wrote to the Applicant to enquire about her intentions as regards her tenancy. The Applicant's visa was due to expire, and the Respondent wished to know about the arrangements he should make regarding advertising for re-letting.
9. The Applicant advised the Respondent that she was unable to remain in the UK, but suggested that Morolake take over the tenancy. The Respondent requested paperwork to support Morolake's right to reside in the UK, which was provided.
10. The Respondent noted that Morolake had used the Property address in forms submitted to the University of Glasgow as her residence. The Respondent contacted the Applicant, who confirmed that Morolake had been living in the Property since September 2023.
11. By email dated 29 January 2024, the Respondent invited the Applicant and Lydia to a meeting at the Property that evening at 7:30pm.
12. At 7:30pm on 29 January 2024, a meeting took place at the Property attended by the Applicant, the Respondent, Morolake, Lydia and the Respondent's wife, Isma Devlin ("the Meeting").
13. At the Meeting, the Respondent asserted that he was entitled to payment of £2,175 in respect of unpaid rent by Morolake, being the sum of £435 per month for the 5 months that she had been residing at the Property.
14. The Respondent advised the Applicant that he would agree to terminate her tenancy and grant a new tenancy in favour of Morolake on condition that they pay him the sum of £2,175, with Morolake to pay rent at a rate of £500 per month and a tenancy deposit of £500. The Respondent advised the Applicant that agreement had to be reached that night, for a new tenancy to start on 1

February 2024. The Respondent advised the Applicant that if agreement could not be reached then he would take steps to evict her and Morolake.

15. When making his offer, the Respondent was in a dominant position in the relationship between the Respondent and the Applicant, in respect that the Respondent was the owner and landlord of the Property, was threatening eviction proceedings, and imposing a time pressure on the Applicant, who was unaware of her rights.
16. The Applicant felt under pressure to reach agreement with the Respondent. The Applicant tried unsuccessfully to speak to her guarantor about the Respondent's offer. The Applicant spoke to her father, who suggested that she try to negotiate the Respondent down to £1,500.
17. The Applicant offered to pay the Respondent the sum of £1,500 in full and final settlement of the Respondent's claim for payment of rent in respect of Morolake's period of occupation. The Respondent accepted the Applicant's offer.
18. The Applicant made payment to the Respondent in the sum of £500 as part payment of the agreed sum of £1,500.
19. By email dated 30 January 2024, the Applicant requested that the Respondent set out in writing the list of the Respondent's requests in order to move forward. This was a request for the Respondent to confirm in writing what had been agreed at the Meeting.
20. By email dated 30 January 2024, the Respondent asserted that he had suffered a loss of £2,175 as a consequence of Morolake's occupation of the Property, and confirmed that he had agreed to accept payment of £1,500 in settlement of that claim. The Respondent separately confirmed that he was prepared to offer Morolake a new lease at a rent of £500 per month and on payment of a deposit of £500.

Findings in Fact and Law

1. By failing to seek the Respondent's permission for Morolake to live in the Property, the Applicant acted in breach of clause 11 of the Tenancy Agreement.
2. By failing to notify the Respondent that Morolake had moved into the Property, the Applicant acted in breach of clause 12 of the Tenancy Agreement.
3. As a result of the Applicant's breaches of the tenancy agreement, the Respondent was entitled to seek orders requiring the Applicant to comply with her obligations under the Tenancy Agreement.

4. The Applicant having breached her obligations under the Tenancy Agreement, the Respondent was entitled to reparation therefor.
5. The Respondent suffered no loss as a result of the Applicant's breach of her obligations under the Tenancy Agreement.
6. The Respondent was not entitled to payment of any sum to reflect the period of Morolake's occupation of the Property.
7. The Applicant contracted with the Respondent to make payment of the sum of £1,500 in full and final settlement of the Respondent's claim for reparation in respect of the occupation of the Property by Morolake ("the Settlement Agreement").
8. The Respondent having induced the Applicant to enter into the Settlement Agreement by exerting force and fear, the Settlement Agreement was a voidable contract.
9. Separately, the Respondent having induced the Applicant to enter into the Settlement Agreement by exerting undue influence, the Settlement Agreement was a voidable contract.
10. The Applicant, having rescinded the Settlement Agreement on 30 January 2024, is entitled to repayment of £500 paid by her in partial implement of the Settlement Agreement.

Statement of Reasons

1. This Application called for its hearing on 18 November 2024 by WebEx. Both parties were present on the WebEx. The Applicant attended from Nigeria. The Respondent dialled into the WebEx by his telephone in the UK, having had trouble signing into the video platform.
2. This is an Application seeking payment of the sum of £500 which had been paid by the Applicant to the Respondent under what she claimed were false pretences. The Respondent's position is that, not only should the sum of £500 not be returned, but the Applicant is under obligation to pay a further £1,000 under an agreement reached between the parties. It is that purported agreement, and the circumstances surrounding it, that is the focus of this Hearing.
3. Much of the facts surrounding this matter are uncontentious. The Applicant was the tenant, and the Respondent the landlord, of the Property under and in terms of a Private Residential Tenancy Agreement which commenced on 11 June 2021 ("the Tenancy Agreement"). The Property is a two-bedroom flat with shared living room and kitchen facilities. The Applicant had exclusive use of an en-suite bedroom in the Property. The other bedroom, together with the main bathroom in the Property, was let to Lydia Jilantikiri ("Lydia") during the

Applicant's tenancy ("Lydia"). Until January 2024, the relationship between the Applicant and the Respondent, and indeed Lydia and the Respondent, was cordial. In terms of clause 11 of the Tenancy Agreement, the Applicant was prohibited from subletting the Property, or any part of it, or from taking in a lodger, or from assigning the Tenancy Agreement, or from allowing another person to live at the Property without the Respondent's written permission. In terms of clause 12 of the Tenancy Agreement, the Applicant was under contractual obligation to write to the Respondent if a person over the age of 16 was to live at the Property as their only or main home. That notwithstanding, the Applicant allowed her sister, Morolake Agbola ("Morolake") to move into the Property with her without telling the Respondent or obtaining his permission. By doing so, the Applicant breached her obligations under the Tenancy Agreement. In or around January 2024, the Respondent wrote to the Applicant to enquire about her intentions as regards her tenancy. The Applicant's visa was due to expire, and the Respondent wished to know about the arrangements he should make regarding advertising for re-letting. The Applicant advised the Respondent that she was unable to remain in the UK, but suggested that Morolake take over the tenancy. The Respondent requested paperwork to support Morolake's right to reside in the UK, which was provided. The Respondent noted that Morolake had used the Property address in forms submitted to the University of Glasgow as her residence. The Respondent contacted the Applicant, who confirmed that Morolake had been living in the Property since September 2023. By email dated 29 January 2024, the Respondent invited the Applicant and Lydia to a meeting at the Property that evening at 7:30pm. At 7:30pm on 29 January 2024, a meeting took place at the Property attended by the Applicant, the Respondent, Morolake, Lydia and the Respondent's wife, Isma Devlin ("the Meeting"). That evening, the Applicant made payment to the Respondent in the sum of £500.

4. The questions for the Tribunal to determine are (i) what happened at the Meeting, and (ii) is the Applicant entitled to repayment of the sum of £500?

Evidence

5. The Tribunal heard from four witnesses: the Applicant, Lydia, the Respondent, and Isma Devlin ("Isma").

Moyosola Agbola (The Applicant)

6. The Applicant was candid in her acceptance to the Tribunal that, by allowing her sister to stay in the Property, she had breached her obligations. She described that as a lapse in judgement. Her evidence was that her sister, Morolake, had been accepted to study for a Masters degree by the University of Glasgow. Her course was due to begin in September 2023. In advance of Morolake's arrival, the Applicant tried to find her suitable accommodation. The search was not successful. It was therefore decided that the Morolake would move into the Property and stay with the Applicant in her room until Morolake

found somewhere else to stay. It was expected to be a short-term arrangement, but it obviously went on longer than expected.

7. The Applicant spoke to receiving contact from the Respondent in January 2024 looking for an update on the Applicant's plans. The Applicant had previously provided details of her immigration status to the Respondent, and he was aware that her visa was due to expire. The Applicant confirmed to him that she would be unable to remain in the UK, but suggested that her sister could take over her tenancy. The Respondent was open to that suggestion, and requested copies of her documentation. Once the documentation was provided, the Respondent realised that Morolake had been staying in the Property. The Property was listed as her UK contact address on paperwork for the University of Glasgow. By email on 29 January 2024, the Respondent asked the Applicant and Lydia for a meeting at the Property at 7:30pm that evening.
8. The Applicant told the Tribunal that the Respondent told both her and Lydia that they were in breach of their tenancy agreements. He said that they did not have his permission for Morolake to be there. He said that he was owed about £2,500 in rent arrears for Morolake being there. He said that he would have to take them to a Tribunal for eviction due to their breach. He said that he would contact immigration services because he was not sure of Morolake's immigration status. He said that Morolake's presence would have increased the wear and tear to the Property. He referred to an increased factor and insurance cost.
9. On that basis, he told Lydia that she would need to sign a termination of her tenancy agreement, and then a new tenancy agreement with rent increased to £500 per calendar month. He gave the Applicant two options: (One) Morolake could take over the tenancy and the Applicant could move out by the end of February; or (Two) the Applicant could stay on, but Morolake would have to move out within a few days. After a moment to discuss the options, the Applicant and Morolake agreed that the Applicant would move out and Morolake would stay on.
10. After the Respondent was told of the decision, discussions turned to payment. The Respondent told Morolake that the rent would be £500 per month, and she would need to pay a £500 tenancy deposit. He also said that she owed £2,200 for the period that she had been staying in the Property, i.e. since September 2023. The Respondent told the Applicant and Morolake that the full sum of £3,200 had to be paid that night. The Applicant spoke of feeling under intense pressure to make payment. She said she, Morolake and Lydia were all in tears at different points in the conversation.
11. The Applicant tried to contact her guarantor to discuss raising funds to pay the Respondent, but was unable to reach her. The Applicant then called her father in Nigeria. She explained the situation to him. He suggested that the Applicant try to negotiate with the Respondent, and suggested that she try to reach agreement to restrict the rent arrears to £1,500. The Applicant then

approached the Respondent and offered to pay £1,500 towards Morolake's rent arrears. The Respondent and Isma went into the Applicant's bedroom to deliberate, before returning and confirming that they would accept payment of £1,500 towards the arrears, plus Morolake's rent and deposit for February. The Respondent again demanded that both sums be paid that night.

12. The Applicant explained that she was unable to raise that kind of money that night. The Respondent told her to call her guarantor, and the Applicant confirmed that she had been unable to reach her. Isma suggested that the Applicant must have enough in her savings, but the Applicant confirmed that she did not. The Applicant told them that her father would arrange the payment, but that he needed until the following week to do so. Isma suggested that they could take the Applicant's laptop as collateral until the payment was made. The Applicant refused because she needed her laptop. Isma asked the Applicant if she had any expensive jewellery that she could take as collateral instead. The Applicant confirmed that she had none. Finally, it was suggested that the Applicant could borrow the money from Lydia. Lydia said that she did not have that kind of money.
13. The Applicant said that she had £300, and Lydia said that she could loan her £200. On that basis, the Applicant offered to pay £500 that night, and raise the balance thereafter. The Respondent agreed. The Applicant made a bank transfer to the Respondent, and the Respondent and Isma left the Property. When doing so, she felt under pressure and unable to delay to seek advice on her position.
14. On 30 January 2024, the Applicant wrote to the Respondent and asked for a written account of the Meeting. The Respondent replied with his summary, including that he had restricted the unpaid rent for Morolake from £2,175 to £1,500, of which £500 had already been paid. The balance of £1,000 required to be paid by 31 January 2024. Morolake would become the new tenant on 1 February 2024, and would need to pay her rent of £500 and deposit of £500 by mid-day on 31 January 2024.
15. After the Respondent's email, the Applicant discussed matters further with Morolake and Lydia. She looked into her rights and reached the conclusion that the Respondent was not entitled to act the way that he did, or make the demands that he had. In light of that, the Applicant concluded that she wanted to leave the Property, and was uncomfortable with Morolake remaining on as a new tenant. She was upset and angry. She had felt threatened by the Respondent. She felt that he had taken advantage of a situation involving the Applicant to get something out of Lydia as well. It was therefore decided that Morolake would also find somewhere else to live.
16. On 30 January 2024, the Applicant confirmed by email that she disputed the Respondent's right to receive payment for Morolake's residing in the Property, and demanded repayment of the £500 paid to him the previous evening. He did not respond to that request. Morolake found alternative accommodation

and left the Property on 10 February 2024. The Applicant removed from the Property on 29 February 2024.

Lydia Jilantikiri

17. Lydia is 35 years old. She is a PhD student at the University of Glasgow. Her subject is biomedical engineering.
18. Lydia confirmed that she previously lived at the Property with the Applicant. She spoke about having separate bedrooms and bathrooms, but shared kitchen and living room. She no longer lives at the Property.
19. She spoke of being told by the Applicant that Morolake had been accepted to study for her masters degree at the University of Glasgow, and that she was going to stay at the Property until she found accommodation. Lydia formed the impression that this was to be a short-term arrangement, but never discussed duration with the Applicant. She spoke of her and the Applicant having separate tenancy agreements, and how she saw Morolake as the Applicant's "house guest". She said that the Applicant told her that Morolake would be staying for a while. It was not a request for permission, but more a courtesy to a roommate. Lydia said that she was aware that accommodation was difficult to get following Covid, so she sympathised.
20. Lydia spoke to the Respondent discovering about Morolake and not being happy about it. The Meeting was arranged. The Respondent arrived and introduced his wife, Isma, to everyone. He said that he was disappointed not to have been told about Morolake staying in the Property. He said something about Government agencies not being aware of it, and claimed that he could get into trouble with the police and immigration. He could go to court to get them fined and kicked out of the Property. However, the Respondent then said that, because he was a nice person, he was not going to do that. He said that they had a chance to sort things out.
21. The Respondent told the Applicant and Morolake that they needed to pay for Morolake being there. She could stay on as a tenant, but would need to pay £500 per month for rent moving forward, plus a deposit, plus the rent that had not been paid for the period Morolake was there. Lydia thought that this was a demand for six months' rent, but she was not sure. The Respondent also told Lydia that she would have a "penalty" for not telling him about Morolake, which was that her rent would be increasing from £435 per month to £500 per month. Lydia reminded the Tribunal at that stage that there was a 3% cap on rent increases at that time under legislation, which we understood to be a reference to the cap imposed by the Cost of Living (Tenant Protection) (Scotland) Act 2022. The Respondent said that all sums would have to be paid, and the new tenancy agreed, by Wednesday 31 January 2024 at midday. He also said that he was going to terminate Lydia's current tenancy agreement, and that she would have to pay a new £500 deposit.

22. Lydia said that the Respondent told them that he was not going to leave without something being paid. He told the Applicant to call her guarantor, but she could not get through. Lydia then suggested that the Applicant called her father, which she did. The Applicant's father then suggested that they try to get the Respondent to agree to a lesser sum. He suggested £1,500.
23. Lydia spoke of the Applicant offering £1,500 and that being accepted, but that the new deposit had to be paid as well. She said that the Respondent and Isma suggested taking items from the Property until they were paid. They mentioned a laptop and jewellery. In the end, the sum of £500 was paid, of which Lydia loaned £200 to the Applicant. Lydia begged the Applicant not to put the rent up, but he said she could pay or get out.
24. Lydia said that she felt under pressure during the Meeting. She found the whole thing upsetting. She also spoke of her, the Applicant and Morolake being in tears. She spoke of Isma being unfriendly and raising her voice at them.
25. Following the Meeting, Lydia spoke to her family. She then emailed the Respondent asking to put the tenancy proposals in writing. He answered with questions about her studies and plans, but did not put the proposal in writing. She asked him again. He did not respond. He tried to call her, but she did not answer the calls. By this time, she wanted the proposals put in writing. The Respondent then served a notice to leave.
26. Lydia went on to speak about her own experience of the Respondent after that point. She said that she felt harassed by him. She referred to his service of a notice to leave, and of his pursuing proceedings against her and her guarantor. Those matters are not directly relevant to this case, so the Tribunal has disregarded that evidence.

Colum Devlin

27. The Respondent confirmed that the Property is the only property that he owns for letting purposes. He has been letting it out since 2008.
28. He spoke of his annoyance of discovering that Morolake was living in the Property. He said that he had always been taught that there was "no such thing as a free lunch". He said that he felt that Morolake had gotten to live in his property without paying rent, and that he had lost out as a consequence. When pushed on that, he accepted that he would not have been able to let out the Property to a third person given that (i) it was a two-bedroom flat, (ii) he had two sitting tenants, and (iii) he did not have an HMO licence for the Property. The Tribunal understood the Respondent's evidence to in fact be that he took issue with Morolake getting something for nothing, in his eyes, as opposed to his having actually suffered a loss.

29. The Respondent confirmed that he arranged to meet the Applicant, Morolake and Lydia at the Property. He said that he took his wife along to the meeting because he was meeting with three females and did not want to meet without a witness present. He was concerned about false accusations. He spoke of his disappointment in the whole situation. He said that the Applicant had been his tenant for nearly three years, that they had a good rapport, and that he felt she was trustworthy. However, when he found out that Morolake had been staying in the Property without his knowledge, he said that the trust between him and the Applicant "went down to zero".
30. The Respondent's position was that he wanted to be paid backdated rent for Morolake's staying in the Property. He said that the meeting had been civil. He rejected all accusations that he had pressured the Applicant into paying something. His position was that he had gone to the Property to sort things out.

Isma Devlin

31. Mrs Devlin is the Respondent's wife of nearly ten years. She owns, and lets out, a property in the Temple area of Glasgow. However, she has no involvement in the letting of the Property. She described that as the Respondent's business.
32. Mrs Devlin confirmed that the Respondent asked her to attend the Meeting for support and guidance. He had explained to her about Morolake having been staying in the Property. Mrs Devlin described him as surprised and concerned. She said that the Respondent expressed a fear of being pursued by Government agencies. There was a fear that, if something happened at the Property such as a fire, then there would be some kind of repercussion for him.
33. Mrs Devlin described the meeting. She said that she sat on the sofa and kept out of it. The Respondent did most of the talking. She said that the whole point of the meeting was to make a peaceful arrangement. She recalled that Morolake never spoke, and that the Applicant answered all of the questions put to her. Mrs Devlin's recollection was that Morolake went into the bedroom and stayed there for most of the Meeting.
34. Mrs Devlin said that the discussions centred on Morolake taking on a new lease. She described the meeting as civilised. There was no shouting, threats, demands or pressure. The fact was that the Applicant had breached the Lease, and they needed to resolve matters and move forward. There were discussions about monetary values for compensation, and acceptance that Morolake should have a lease.
35. Mrs Devlin spoke of the Applicant trying to speak to her guarantor by telephone but being unable to get connected. Lydia then suggested to the Applicant that she call her father, which the Applicant then did. Mrs Devlin

said that the Applicant took the call in her bedroom. She said that the Applicant was gone for some time but, when she came back, she offered to pay £1,500 to the Respondent for Morolake's unpaid rent. Mrs Devlin said that she and her husband spoke about it, decided that they would like to just get it resolved, and accepted the offer.

36. The next issue was about payment. The Applicant claimed to be unable to pay the sum. She claimed only to have £300. Lydia offered to loan her £200. It was agreed that £500 would be paid that night, and the balance of monies due, including the first rent and deposit for Morolake, would be paid by Wednesday. Mrs Devlin said that she and her husband then left, and the sum of £500 was paid to them later that night, a couple of hours after the meeting. Mrs Devlin rejected the suggestion that the Applicant had been pressured into making the payment. She denied having suggested that the Respondent take the Applicant's laptop, or any expensive jewellery, as collateral. She said that a laptop has no real value anymore, and the Applicant obviously did not have any jewellery of value.

Discussion

37. This case ultimately turns on what happened at the Meeting. It was there that the sum sued for was paid, and that the agreement for its payment was struck. For the most part, the parties are in agreement as to what happened. They agree that the Respondent arrived, took issue with Morolake having been living at the Property, intimated that he wished to be compensated for that, and proposed that Morolake replace the Applicant as tenant, with a rent of £500 per month and a deposit of £500. There is a minor dispute between the parties about whether the compensation sought was £2,200 or £2,175, but the difference between them on that point matters little. What happened was that the Applicant, having discussed matters with her father, offered to pay £1,500 to the Respondent as compensation for Morolake's occupation, and that was accepted. It was also agreed that Morolake would replace the Applicant as tenant.
38. Where the parties diverge in their evidence relates to the basis upon which that agreement was reached. The Applicant's position is that the offer was made at short notice, under extreme pressure, and without the benefit of advice. The Respondent's position is that the agreement was entered into freely and for a legitimate purpose.
39. Having heard from the witnesses, the Tribunal preferred the evidence of the Applicant and Lydia on those points. The Tribunal accepted that the Applicant felt under intense pressure at the Meeting to appease the Respondent. The Tribunal accepted that the Respondent made threats of eviction and of reporting the Applicant and Morolake to Government agencies, including immigration authorities, for the purpose or main purpose of causing them fear and alarm, and to thereby procure their agreement to pay a capital sum that the Respondent was not otherwise entitled to.

40. The Respondent appears to have proceeded here based on his mantra that “there is no such thing as a free meal”. It is clear that he felt that this entitled him to a payment that he would not otherwise have been entitled to. However, the principal in law for reparation is that, in very general terms, when one person causes loss to another, then the person who caused the loss is liable to pay damages to put the person who suffered the loss into the same position as they were before. That is the principal of compensation: it is designed to put a victim of an unlawful act into as near to the position that they were in before, insofar as money is able to do so.
41. In this case, the Respondent asserted that he was entitled to compensation for Morolake’s occupation of the Property, assessed as the rent that he would have been entitled to charge. By his own admission, he would not have been able to charge rent. The flat had two occupied bedrooms. Morolake’s occupation of the Property did not prevent him from bringing in another tenant. The lack of space, and lack of a HMO licence, prevented that. The Applicant breached her obligations in her tenancy agreement; there is no doubt about that and the Applicant has been candid in that respect. However, that breach caused no loss. The Respondent’s remedies were to seek interdict to stop the continued breach, or to commence eviction proceedings. He had no right to demand payment. However, the reality was that he did not want to stop the breach or to commence eviction proceedings. The Applicant was about to leave the country, and was offering him a ready made replacement tenant. That substitution would cure the ongoing breach. What the Respondent wanted was a pound of flesh.
42. When viewed against that light, the Respondent’s conduct becomes clear. He attended at the Property and refused to leave until he was paid a sum that he had no right to demand. He was in a position of power over the Applicant, and Morolake, and he sought to exploit it for his own gain. He made threats of enforcement action that he had no real intention of pursuing, in order to procure that the Applicant agree to pay a sum to him. As part of that, he and his wife threatened to take moveable property belonging to the Applicant as collateral for payment. It was against the background of those threats that the Applicant made payment of the sum now claimed.
43. The effect of force and fear on a contract is considered in Gloag and Henderson, *The Law of Scotland*, 15th Edition, at paragraph 7.11:-

“Previous editions of this work have stated that it is probably the law that a contract induced by violence, or by threats sufficient to overcome the fortitude of a reasonable man, is void, with an exception in the case of a bill of exchange, which is merely voidable, and may be enforced by a holder who can establish affirmatively that he gave value for the bill without notice of any objection. It may however be preferable to see the effect of violence or threats as rendering the contract voidable, with absolute voidness reserved for exceptional cases where the violence or threat is such as to exclude the victim’s consent or voluntariness completely. Threats need not be of actual physical violence; an allegation by a workman of threatened loss of

employment has been held relevant. But threats of steps which the party may lawfully and warrantably take, such as proceedings in bankruptcy, or under the former law, imprisonment for debt, do not invalidate a payment or security thereby induced, though they fall under the general rule of force and fear if used to extort consent to some independent contract or payment... Threats of violence or injury to near relations have the same legal effect as threats to the party himself."

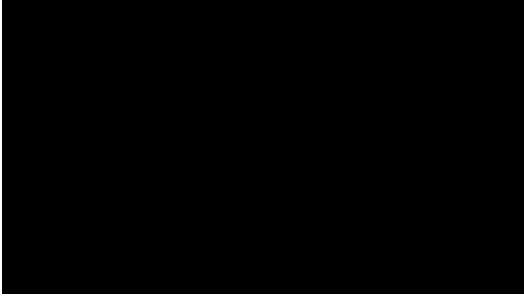
44. In this case, the Tribunal is satisfied that the Respondent induced the Applicant to enter the contract by the making of threats sufficient to overcome the fortitude of a reasonable person in the position of the Applicant. For that reason, the agreement reached at the Meeting was voidable, and capable of rescission at the instance of the Applicant. It is clear from her email on 30 January 2024 that she sought to rescind the agreement and recover payment. That is sufficient for the Tribunal to grant the payment order in her favour.
45. For completeness, the Tribunal also considered that the Respondent procured that the Applicant enter into the agreement by the impetration of undue influence upon her. The requirements to establish undue influence were described by Lord Shand in *Gray v Binny*, (1879) 7 R. 332, at page 347, as:-

“... in the first place, the existence of a relation between the granter and grantee of the deed which creates a dominant or ascendant influence, the fact that confidence and trust arose from that relation, the fact that a material and gratuitous benefit was given to the prejudice of the granter, and the circumstance that the granter entered into the transaction without the benefit of independent advice or assistance.”
46. The Tribunal was satisfied that those factors were present in this case. The Respondent, as landlord, was in a dominant position of influence over the Applicant, as tenant. Both parties spoke to the trust and confidence which existed between them arising out of that relationship, prior to the outcome of the Meeting. The payment made by the Applicant amounted to a material and gratuitous benefit to her prejudice, standing the Respondent's lack of any meaningful claim against her, and the Applicant lacked opportunity to seek independent advice or assistance from any person with knowledge of the law in this area. It follows that the agreement reached was voidable by reason of undue influence, and the Applicant's subsequent rescission was again valid.
47. For all of those reasons, the Tribunal determined that an order for payment by the Respondent to the Applicant in the sum of £500 should be made. The Tribunal's decision was unanimous.

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.



6th December 2024

Date