



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Rule 24 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) in respect of an application for civil proceedings in relation to matters associated with a tenancy under the Housing (Scotland) Act 1988 and Rule 70 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules)

Chamber Ref: FTS/HPC/CV/23/2467

Re: Property at 1 Westfield Avenue, Dumbarton, West Dunbartonshire, G82 4JR (“the Property”)

Parties:

Mr Richard Keller, 195 Glasgow Road, Dumbarton, West Dunbartonshire, G82 1DW (“the Applicant”)

Mr Iain Macleod, 49 Hawthorn Avenue, Dumbarton and Mr Allan MacLeod, 38 Kingfisher Avenue, Bonhill, Alexandria, G83 9PY (“the Respondents”)

Tribunal Members:

Karen Moore (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Order for payment of ONE THOUSAND THREE HUNDRED AND FORTY FIVE POUNDS AND SEVENTY FIVE PENCE (£1,345.75) Sterling against Mr. Allan Macleod.

The Tribunal dismissed the Application against Mr. Iain Macleod.

Background

1. By application received between 24 July 2023 and 23 August 2023 (“the Application”), the Applicant applied to the Tribunal for an Order for payment of rent due and owing arising from a short assured tenancy between the Applicant and the Respondents. The Application also sought an order for payment of costs to repair the Property at the end of the tenancy and recovery of legal costs. Interest in terms of the tenancy agreement was also sought.

2. The Application comprised a copy of a tenancy agreement between the Parties, a rent statement showing £1,346.54 due and owing at 19 July 2024, and invoices vouching for the other costs.
3. Case Management Discussions (“CMDs”) were held on 12 January 2024 and 20 May 2024, after which Directions were issued requiring the Parties to set out the legal basis of their respective claims and positions. The Parties complied with the Directions.
4. By email and productions lodged on 15 June 2024, Mr. Keller, the Applicant withdrew his claim for £554.26 for end of tenancy costs and affirmed his claim for rent of £1,346.08, legal costs of £356.59 in terms of Clause 7. 21 of the tenancy agreement and interest in terms of Clause 11 of the tenancy agreement.

Hearing

5. A Hearing of evidence was fixed for 30 January 2025. On the day prior to the Hearing, Mr. Allan Macleod submitted a statement and further productions.
6. A Hearing of evidence took place on 30 January 2025 at 10.00 by telephone. Mr. Keller, the Applicant, was present, unrepresented and supported by his wife. Both Respondents were present and unrepresented.

Preliminary Matters

7. The Tribunal had the benefit of two Notes from the earlier CMDs from which it was noted that Mr. Iain Macleod disputed liability on the basis that he had vacated the Property and relinquished his interest in the tenancy in 2018.
8. The Tribunal asked Mr. Allan Macleod to explain the late lodging of the statement and further productions. He explained that he had only just become aware that he might not be bound by the tenancy agreement and so would not be liable to pay rent, his position being that he ought to have been given a private residential tenancy agreement but that none had been given to him.
9. Mr. Keller confirmed that he had received a copy of the statement and further productions
10. The Tribunal adjourned to consider this new preliminary plea and the content of the statement and further productions.
11. The Tribunal noted that both Respondents had lodged copies of articles in respect of the ending of short assured tenancies and lodged excerpts from the Housing (Scotland) Act 1988. With the exception of one item lodged on 29

January 2025, the items lodged were a statement which Mr. Allan Macleod could read out or speak to and a notice sent by Mr. Keller's letting agent. On balance, the Tribunal took the view that these were not new matters and that it could reasonably infer that the Respondents were challenging the status of the tenancy agreement.

12. The Tribunal reconvened and advised that it would allow the late lodgements to be referred to. With reference to Mr. Allan Macleod's preliminary plea that he was not bound by a tenancy agreement, the Tribunal advised that it would deal with this as part of Mr. Iain Macleod's preliminary plea on his relinquishing the tenancy. The Tribunal pointed out that the effect of Section 3 of the Private Housing (Tenancies) Act 2016 is that a private residential tenancy agreement need not be in writing.

13. The Tribunal then heard evidence in respect of the preliminary matters.

Evidence heard in respect of the preliminary matter

14. Mr. Keller's evidence is that he relied on his letting agents, firstly, Caledonia Bureau and, then, Clyde Property. As far as he knew, the tenancy was a joint tenancy with father and son, Allan and Iain Macleod, from 2016 until 23 March 2023. He stated that three separate Notices to Quit had been served and all had been served on both Respondents. He was aware that these had been signed for. Mr. Keller stated that he had had a good relationship with Mr. Allan Macleod and thought that Mr. Macleod would have told him that Iain had left the Property, but Mr. Macleod did not do this.

15. In answer to questions from the Tribunal, Mr. Keller confirmed that he was "hands off" as a landlord. He explained that he had become aware that Caledonia Bureau were not efficient and that their relationship with Mr. Allan Macleod had deteriorated. He agreed that he had taken advice from Caledonia Bureau in respect of terminating the tenancy and that they had advised that the joint short assured tenancy was in place. Mr. Keller explained that he transferred his business to Clyde Property and that they also proceeded on the basis that the joint short assured tenancy was in place.

16. Mr. Iain Macleod's evidence was that he gave notice that he intended to end his part of the tenancy in 2018. He had spoken with Caledonia Bureau beforehand and they told him to give notice in writing. He stated that he followed Caledonia Bureau's advice and hand delivered a letter to them giving two months' notice that his tenancy would end. He did not have a copy of the letter he had hand delivered and did not know the exact date, but estimated that it was in the summer of 2018. He stated that he did not hear anything further from Caledonia Bureau. Mr. Iain Macleod stated that he then vacated the Property and moved to another area with his girlfriend who is now his wife.

He stated that since 2019 they have been owner occupiers in their home in Dumbarton.

17. Mr. Allan Macleod's evidence was that his son had given notice to end his interest in the tenancy. He stated, that following the notice being given, Caledonia Bureau dealt with him alone. Mr. Macleod referred the Tribunal to various emails and correspondence from Caledonia Bureau, all of which post-dated the notice, addressed to him alone, with no mention of his son. Mr. Macleod spoke of Caledonia Bureau in scathing terms and said that he had been misled by them in respect of the original short assured tenancy and the effect of his son leaving. Mr. Macleod also spoke of Mr. Keller in scathing terms, inferring him to be an unscrupulous landlord as Mr. Keller had not entered into a further tenancy agreement with Mr. Macleod. Mr. Macleod stated that Mr. Keller had profited from Mr. Macleod paying rent without having a binding tenancy agreement and had deliberately failed to obtemper his statutory obligations. Mr. Macleod produced no evidence in support of his claims and had no regard to the fact that Mr. Keller employed letting agents.
18. Both Respondents stated that they had not been aware that Mr. Keller and his new letting agents considered Mr. Iain Macleod still to be a tenant until the notices to quits were served and tribunal proceedings had been raised.
19. Mr. Iain Macleod left the Hearing at this stage and appointed his father as his representative.

Additional evidence in respect of the preliminary matter

20. In addition to the Application and the oral evidence, the Tribunal had the benefit of the written submissions and productions lodged by all Parties.

Evidence in respect of the sum claimed as due and owing.

21. Mr. Keller, with reference to rent statement lodged by him, stated that the rent due is £1,345.75. He explained that Mr. Allan Macleod is paying one pence per week and so the rent due is slowly decreasing.
22. Mr. Allan Macleod stated that his position has changed from the CMDs when he accepted liability for £1,700.00 as he now considers that he is not liable for any rent as Mr. Keller failed to provide him with a new tenancy agreement.
23. On behalf of his son, Mr. Allan Macleod stated that his son was not liable as he had vacated the tenancy.
24. With regard to the legal costs, Mr. Keller stated that he relied on clause 7.21 of the tenancy agreement. He did not accept that clause 7.21 applied to legal costs incurred by his managing agents on his behalf and stated that it should extend to him as landlord.

25. With regard to the specific legal costs, Mr. Keller accepted that these related to eviction actions to terminate the tenancy at a contractual end date and so there was no fault on the part of the tenant. He stated that he had been advised by his then solicitors and then by the tribunal administration to instruct sheriff officers and had incurred additional costs because of this.
26. Mr. Allan Macleod stated that his position is, that if the short assured tenancy has fallen, so has the liability for legal costs for both himself and his son. He stated that, in any event, there was no need to instruct tracing agents as Mr. Keller could have called or emailed him for his son's address.
27. With regard to interest, Mr. Keller stated that he relied on clause 11 of the tenancy agreement which provided for interest at 5% above the Bank of Scotland base rate.
28. Mr. Allan Macleod stated that his position is, that if the short assured tenancy has fallen, so has the interest clause.

Findings in Fact

29. On all of the evidence before it, the Tribunal made the following Findings in Fact:
 1. Mr. Keller is the owner of the Property;
 2. Mr. Keller employed Caledonia Bureau as letting agents to manage the Property on a full management basis including dealing with tenancy agreements;
 3. Mr. Keller did not deal with any aspect of the tenancy agreements;
 4. A tenancy of the Property was entered into between Mr. Iain Macleod and Mr. Allan Macleod as Tenants and Mr. Keller as Landlord dated 13 August 2016;
 5. The tenancy agreement was prepared by Caledonia Bureau, as letting agent for Mr. Keller and signed by them on his behalf;
 6. Caledonia Bureau managed the tenancy agreement and the tenancy;
 7. Mr. Keller did not have an active role in the management of the tenancy;
 8. No further conversations took place regarding guarantees;
 9. Around June or July 2018, Mr. Iain Macleod gave two month's written notice to Caledonia Bureau that he intended to end his interest in the tenancy;
 10. Following Mr. Iain Macleod giving notice, Caledonia Bureau corresponded and dealt with Mr. Allan Macleod, alone;
 11. Following his notice, Mr. Iain Macleod had no dealings with Caledonia Bureau;
 12. Following Mr. Iain Macleod's notice, Caledonia Bureau took no action in respect of the status of the tenancy agreement;
 13. In particular, Caledonia Bureau did not vary the tenancy agreement or enter into a new agreement with Mr. Allan Macleod;
 14. Caledonia Bureau did not report to Mr. Keller in respect of Mr. Iain Macleod's notice or the change of the status of the tenancy agreement;

15. Mr. Keller was unaware that Mr. Iain Macleod was no longer a tenant at the Property;
16. Around 2021, Mr. Keller employed Clyde Property as letting agents to manage the Property on a full management basis including dealing with tenancy agreements;
17. Clyde Property were instructed on the basis that the short assured tenancy between Mr. Iain Macleod and Mr. Allan Macleod as Tenants and Mr. Keller as Landlord remained in place;
18. Clyde Property raised actions for recovery of possession of the Property on the contractual end of the tenancy agreement against both Mr. Iain Macleod and Mr. Allan Macleod;
19. Mr. Allan Macleod vacated the Property on or around 15 March 2023;
20. The monthly rent for the Property was £670.00;
21. Mr. Allan Macleod alone paid rent for the Property after Mr. Iain Macleod vacated the Property;
22. Mr. Allan Macleod stopped paying the full rent for the Property in or around November 2022;
23. Rent amounting to £1,345.75 accrued to 15 March 2023
24. Rent amounting to £1,345.75 is due and owing by Mr. Allan Macleod;
25. Mr. Allan Macleod is paying one pence per week towards the outstanding rent;
26. The tenancy agreement between Mr. Iain Macleod and Mr. Allan Macleod as Tenants and Mr. Keller as Landlord does not entitle Mr. Keller to recover legal costs from his tenants and
27. The said tenancy agreement entitles Mr. Keller to interest on sums due under that tenancy agreement.

Tribunal's assessment of the evidence.

28. The Tribunal accepted the various documents lodged as part of the tribunal process at face value and had no reason to challenge them.
29. The Tribunal found Mr. Keller and Mr. Iain Macleod to be credible and reliable in their evidence which they gave in straightforward manner. The Tribunal found Mr. Allan Macleod to be less so in the way in which he gave evidence as he attempted to disparage Mr. Keller without reason.
30. The Tribunal agreed with Mr. Allan Macleod that Caledonia Bureau had not assisted or served well Mr. Keller, as landlord, or the two Mr. Macleods, as tenants. The Tribunal accepted that the two Mr. Macleods had proceeded on the basis that that Mr. Iain Macleod had given proper notice to end his interest in the joint tenancy following which, in their view, the tenancy vested in Mr. Allan Macleod, alone.

31. The Tribunal accepted that Mr. Keller was completely unaware of this possible change to the tenancy and was completely unaware that Caledonia Bureau had not acted on receipt of Mr. Iain Macleod's notice.
32. The Tribunal found no merit in Mr. Allan Macleod's position that he was not obliged to pay rent as there was no tenancy agreement. Albeit that he may not have had a written tenancy agreement after his son vacated the Property, he remained there and paid rent. On the balance of probabilities, he had created a private residential tenancy with a monthly rent of £670.00 which he paid for the most part until vacating the Property. The Tribunal found his weekly payment of one pence to be childish and intended to annoy Mr. Keller.

Decision with reasons in respect of the preliminary matters

33. The issue for the Tribunal in respect of the preliminary matters is, in the absence of evidence to the contrary, did Mr. Iain Macleod terminate his interest in the tenancy in or around the summer of 2018 and did Mr. Allan Macleod remain in the Property as a sole tenant?
34. From its Findings in Fact, the Tribunal determined that Mr. Iain Macleod did terminate his interest in the tenancy in or around the summer of 2018 and Mr. Allan Macleod remained in the Property as a sole tenant, regardless of the absence of a written tenancy agreement.

Decision with reasons in respect of the sums claimed as due and owing

35. The Tribunal having found in fact that the sum of £1,345.75 in rent is due and owing by Mr. Allan Macleod to Mr. Keller, determined to make a payment order for that sum.
36. The Tribunal, not being satisfied that the joint tenancy between Mr. Iain Macleod and Mr. Allan Macleod as Tenants and Mr. Keller had survived Mr. Iain Macleod's termination of his interest, determined that Mr. Keller had not proved a contractual obligation on the part of Mr. Allan Macleod for legal costs and interest and so did not make an order for these sums. In any event, the Tribunal found that Mr. Keller had not proved any entitlement to legal costs.
37. This decision is 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.

Karen Moore

Legal Member/Chair

31 January 2025
Date