



**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/24/0909 and FTS/HPC/CV/24/5760**

**Re: Property at 28/3 Craighouse Gardens, Edinburgh, EH10 5TY (“the Property”)**

**Parties:**

**Mr Ranjan Bhat, 4 Kelly Place, Edinburgh, EH16 4FX (“the Applicant”)**

**Ms Li Sun, 20/6 Hutchison Medway, Edinburgh, EH14 1QQ (“the Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member) and Mr T Cain (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment in the sum of £89.01 should be granted in favour of the Applicant.**

**Background**

1. A Rule 111 application was received from the Applicant in the period between 26<sup>th</sup> February and 23<sup>rd</sup> March 2024. The Applicant was seeking an order for payment in the sum of £105 in respect of charges made by the Respondent for Wi-fi during the term of the tenancy between the parties which commenced on 10<sup>th</sup> June 2023 and ended on 9<sup>th</sup> January 2024.
2. A Case Management Discussion (“CMD”) took place by telephone conference on 12<sup>th</sup> June 2024. Both parties were in attendance. The CMD was continued to an evidential hearing on the matter of whether the term in the tenancy agreement requiring the Applicant to pay £25 per month for Wi-fi was a fair contract term, given that the actual cost of Wi-fi to the Respondent was £29.21 per month, and there were three tenants in the Property. The Applicant’s position was that the Respondent was receiving £75 per month from the tenants in respect of Wi-fi, and that this was unfair.
3. A Direction dated 12<sup>th</sup> June 2024 was issued to the Respondent in the following terms:

The Respondent is required to provide:

1. A note of their defence to the application.
2. An indication of whether they intend to seek outstanding Council Tax by way of counterclaim in this application.
3. If they are seeking payment of outstanding Council Tax by way of counterclaim, they must set out in writing the sum due and reasons for the sum being outstanding.

The said documentation should be lodged with the Chamber no later than close of business 14 days after the issue of this Direction.

4. The Respondent did not comply with the Direction.

### **The Hearing**

5. A hearing took place by telephone conference on 20<sup>th</sup> November 2024. The Respondent was in attendance. The Applicant was not in attendance. The Tribunal decided to proceed in the absence of the Applicant.

### **Preliminary matters**

6. Responding to questions from the Tribunal as to whether the Applicant paid £25 each month for Wi-fi for the duration of the tenancy (7 months), the Respondent said that was the case.

### **The Respondent's position**

7. The Respondent said it was not true that she received £75 per month for Wi-fi, because there were only two tenants in the Property. She was receiving £50 per month.
8. The Respondent said the charge was fair because she had to pay £50 installation costs, and commit to a 24-month contract with a cancellation fee of £199. The Property was sometimes empty for months at a time and she still had to pay the full cost of the Wi-fi. The Property was empty for three months after the Applicant's tenancy ended and she had to bear the cost.
9. The Respondent said the Applicant lived in the Property on his own for December 2023 and January 2024, at which time he only paid £25. During the previous month, he shared the Property with his friend, and they each paid £25. It was not correct to say he should only have paid a third share of the actual cost, as there were not three tenants at any time.
10. The Respondent said she gave the Applicant the contract a month before the tenancy commenced. The contract included the term regarding payment for

the Wi-fi. The Applicant was happy to agree to the terms of the contract. The charge for Wi-fi was a fair charge.

11. Responding to questions from the Tribunal regarding the number of rooms in the Property, the Respondent said there were two bedrooms, a living room, kitchen and bathroom. Responding to questions as to why there was no mention of a living room in the tenancy agreement, the Respondent said there was occasional flooding from the upstairs property, so she kept the living room free for use in emergencies. Asked why the Applicant might state several times within his application and representations that there were three tenants, the Respondent said she did not know. There were only two tenants, and the Applicant stayed alone for a time. The Respondent said the reason the Applicant lived alone for two months was that the other tenant moved out, and it was difficult for the Respondent to find a tenant at that time of year. The Respondent denied she had ever stated to the Applicant that the extra money from the Wi-fi was being kept in case of any other sums due. The Respondent said the Property was not a House in Multiple Occupation ("HMO"), despite the representations of the Applicant.
12. The Tribunal adjourned to consider matters. The Tribunal decided it required further information before making a decision and decided to issue a Direction to the Applicant and continue the hearing.
13. The Respondent indicated she would be making an application against the Applicant to recover Council Tax due. She stated that the Applicant had said he would pay the outstanding Council Tax, but he has not done so.
14. The Tribunal issued a Direction dated 20<sup>th</sup> November 2024 to the Applicant in the following terms:

**The Applicant is required to provide:**

The reason for his failure to attend the Hearing set down for 20<sup>th</sup> November 2024;

An indication of whether he wishes to continue to pursue the application;

If he does continue to wish to pursue the application, the Applicant should provide the following:

- (i) Details of any council inspections of the Property during his tenancy, including the name of any council member or staff involved in inspections, if available;
- (ii) A timeline showing occupancy of the Property from the start of his tenancy;
- (iii) Details of the monthly amount of rent paid by the occupants during the Applicant's tenancy, if known.

15. By email dated 29<sup>th</sup> November 2024, the Applicant responded with an explanation and evidence regarding his non-appearance, which had been due to the delay of baggage when travelling including his laptop, and the loss of his phone. The Applicant confirmed he wished to continue with the application. The Applicant did not respond to the remainder of the Direction.
16. A counterclaim was received from the Respondent in the period between 17<sup>th</sup> December 2024 and 24<sup>th</sup> January 2025. The Respondent was seeking the sum of £65 in respect of unpaid Council Tax. The Respondent claimed the Applicant was liable for 11 days Council Tax as his status as a university student ended on 31<sup>st</sup> December 2024. The Respondent claimed the Applicant left the Property on 11<sup>th</sup> January 2024 and was liable for Council Tax for the period from the expiry of his student status to the end of the tenancy.
17. The applications were conjoined with a hearing assigned to continue hearing evidence in the Applicant's application and to hear the Respondent's counterclaim.
18. A hearing took place by telephone conference on 7<sup>th</sup> May 2025. Both parties were in attendance.

### **Preliminary Issues**

19. The Applicant said he thought he had responded to the Tribunal's Direction.
20. The Respondent confirmed her full name and address.
21. The Applicant said he was opposing the counterclaim.

### **The Applicant's position**

22. The Applicant said there were two bedrooms in the Property, and a third bedroom had been created by converting the living room. There was no HMO licence. The Applicant only became aware of this when the local authority visited and asked questions about how many people were living in the Property. He said he answered their questions honestly. He was then contacted by the Respondent, who asked him to move out, saying she had to sell the Property, but she had not sold it and is still a registered landlord.
23. The Applicant said there were three tenants in the Property until the last month, when the male tenant left. The female tenant left about 10 or 15 days before the Applicant's tenancy ended. The Applicant said there was no flooding while he lived at the Property. As far as he was aware, the male tenant paid £10 less than the Applicant to rent the converted living room.
24. The Applicant said he was not aware of the true cost of the broadband when he agreed to pay £25 per month. He later became aware that the broadband

monthly cost was £29.21, as set out in the Talk Talk letter lodged by the Applicant. It was the Applicant's position that, when he discussed this with the Respondent, she said she was saving the additional money for broadband in case of issues with the tenants, and that she would refund some money to the Applicant. The Applicant expected to be refunded around £100, but this did not happen. The Applicant said he should not be expected to pay towards installation costs or tenancy voids. This was not justifiable. It was his position that tenants moved in after he moved out, because, when he went to collect some belongings, there were tenants in the Property.

25. Responding to questions from the Tribunal as to why the Applicant agreed to the broadband term within the tenancy agreement, the Applicant said he was new to Scotland. He had previously been in student accommodation where the internet was free. It was very difficult to get student accommodation and he was keen to move into the Property. He did not take advice on the terms of the tenancy agreement. The Applicant said he now believed it was against Scottish tenancy rules for a landlord to attend a property without notice. It was stated in the tenancy agreement that the Respondent could attend without notice and the Applicant said she often did so. He had not been charged for untidiness as set out in the tenancy agreement.
26. The Applicant said the Respondent said she would call him the morning after he moved into the Property. He was unable to take the call because he was working, and the Respondent then said he would have to vacate because he had missed the call. He said he told the Respondent he had nowhere else to go, and she changed her mind and allowed him to stay.
27. The Applicant said he had evidence to show there were three tenants and could provide this to the Tribunal if requested. The Applicant referred to WhatsApp messages between the parties lodged on 7<sup>th</sup> June 2024, which showed the Respondent stating on 2<sup>nd</sup> December 2023 'I've spoken to the girl and she is moving out in a couple of weeks.'

### **Response from Respondent**

28. The Respondent reiterated that there were only two tenants in the Property at any one time. The Applicant's friend was there when he moved in. The Applicant was aware of the terms of the tenancy. The Applicant's friend moved out at the end of November 2023, and a female tenant moved in thereafter. The Applicant was living alone in the Property for December 2023 and January 2024. The Respondent said she did intend to sell the Property but the market was poor, so she eventually re-let it.
29. The Respondent reiterated her earlier submissions regarding the Wi-fi bill, stating that she had only received £50 each month, and she was responsible for installation costs and had to pay the full sum when the Property was empty. If it was to be found that the Applicant should not have to pay £25 each month, the actual cost of £29.21 should be divided by two; however, it remained the Respondent's position that this was not an unfair contract term,

and £25 was a fair amount to charge each tenant. The Respondent said there was no discussion between the parties regarding any refund of Wi-fi costs. The Respondent said, if the Applicant's reasoning in respect of the costs was to be applied, he should be liable for half the Wi-fi cost for five months and the full cost for two months, which would equal £147.

30. The Respondent said the male tenant moved out in September 2023, then the female tenant moved in.

## **The counterclaim**

### **The Respondent's position**

31. The Respondent referred to the Council Tax letter from the local authority included within her application which showed she had paid £875 to 11<sup>th</sup> January 2024. It was her position that the Applicant moved out of the Property on 11<sup>th</sup> January 2024. He was, therefore, due to pay Council Tax for 11 days, given that his student status expired on 31<sup>st</sup> December 2023. The Respondent said Council Tax was £198 per month, therefore, the Applicant was due to pay £65 for 11 days.

32. Responding to questions from the Tribunal as to why it was stated in the tenancy agreement that each tenant was due to pay £65 per month for Council Tax, if they did not have full time student status, the Respondent said that was the proportion each student should pay.

### **The Applicant's position**

33. The Applicant said he moved out of the Property on 9<sup>th</sup> January 2024. His tenancy agreement was for a room and not for the whole Property. He ought to be liable for one third share of the Council Tax and one third share of the broadband. It was his position that, if he was living alone in the Property for a few days, he was not liable for the full Council Tax. He had calculated that he should be due to pay £9 or £10 to cover 9 days.

## **Findings in Fact and Law**

34.

- (i) The parties entered into a tenancy agreement in respect of a double room with shared kitchen, bathroom and hallway within the Property which commenced on 10<sup>th</sup> June 2023 and ended on 9<sup>th</sup> January 2024. The rent was £570 per month.
- (ii) There were two bedrooms within the Property.
- (iii) The living room of the Property had been converted into a third bedroom.

- (iv) The Applicant shared the Property with two other tenants for the majority of his tenancy.
- (v) The tenancy agreement provided that the Applicant would pay '£65 Council Tax per month without the valid proof of full-time Uni student certificate.'
- (vi) The tenancy agreement provided that the Applicant would pay '£25 Wi-fi per month fixed regardless it being used or not/regardless how many days being used within a month period or how many people sharing the property.'
- (vii) The Applicant paid the £25 Wi-fi charge for seven months, totalling £175.
- (viii) The Applicant's status as a student expired on 31<sup>st</sup> December 2023.
- (ix) The Applicant was liable to pay a third share of Council Tax for 9 days from 31<sup>st</sup> December 2023 to 9<sup>th</sup> January 2024.
- (x) The term regarding the Wi-fi charge is an unfair contract term in terms of the Consumer Rights Act 2015.
- (xi) The Applicant ought to have been charged one third of the monthly cost of the Wi-fi.
- (xii) The Respondent was unjustly enriched by the payment made by the Applicant in respect of the unfair contract term.

### **Reasons for Decision**

35. The Tribunal found the Applicant to be a credible witness. The Tribunal preferred the evidence of the Applicant that there were three tenants in the Property for the majority of his tenancy. In reaching this finding, the Tribunal had regard to the agreed evidence that there was a male tenant when the Applicant's tenancy commenced. The Tribunal took into account that a female tenant moved into the Property, and left at some time after 2<sup>nd</sup> December 2023. The Tribunal was not persuaded that the female tenant moved in after the male tenant moved out, as submitted by the Respondent. The Tribunal accepted the Applicant's evidence that the tenancy ended on 9<sup>th</sup> January 2024

36. The Tribunal did not find the Respondent to be a credible witness. The Respondent was not a responsible landlord. The tenancy agreement was poorly drafted and contained at least one other unfair contract term, namely that 'the landlord can drop in anytime for inspection, if any dirty dishes or messy stuff lying around, dirty toilet or shower cubicle, pics will be taken and a min charge of £10 each time to whom they belong'. The tenancy agreement set out that the term of the tenancy was from 10<sup>th</sup> June 2023 to 31<sup>st</sup> January

2024. This is incorrect, as the tenancy was a private residential tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”), with no end date. The Respondent was not entitled to impose restrictions on whom the Applicant could allow into the Property, as stated in her WhatsApp message of 17<sup>th</sup> December 2023. The Tribunal accepted the Applicant’s unchallenged evidence that the Respondent threatened to end the tenancy on the second day, because the Applicant failed to take the Respondent’s call.

37. The Tribunal did not find the Respondent to be credible in her evidence that the living room was not in use as a bedroom. In reaching this finding, the Tribunal took into account that the tenancy agreement made no mention of a living room as shared accommodation. If the room was generally free from occupation, it would have been a communal space. It was clear to the Tribunal that the Respondent became concerned after the local authority had visited the Property and discovered that it was probably an HMO, given that it was let to three unrelated people. The WhatsApp message from the Respondent of 17<sup>th</sup> December 2023, with regard to who was allowed to enter the Property, tends to support the view that the Respondent was trying to evade her legal responsibilities in respect of the HMO.
38. Tenancy agreements come within the provisions of Part II of the Consumer Rights Act 2015 (“the 2015 Act”). Section 62(1) of the 2015 Act provides that an unfair contract term is not binding on the consumer – in this case, the Applicant. The Tribunal is satisfied that the Wi-fi term within the contract, or tenancy agreement, was unfair and to the detriment of the Applicant. In charging three tenants £25 each per month, the Respondent was unjustly enriched, given that the Wi-fi monthly bill was £29.21. The Respondent was obtaining £75 each month to cover a bill of £29.21. It was not the responsibility of the Applicant or any other tenant to cover the cost of installation of Wi-fi, or to cover the cost during tenancy voids. It was the choice of the Respondent to instal Wi-fi, and she ought to bear the costs of installation and voids.
39. The Applicant was adversely affected by the imposition of this contract term. The Tribunal considered there was an imbalance in the relative bargaining power of the parties at the time the tenancy started. The Respondent was behaving, and has behaved, in an authoritarian and unjustified manner in imposing conditions, and unfair contract terms, on the tenants. The Applicant was having difficulty sourcing student accommodation and was grateful to have done so. It was his first private let, and he was unfamiliar with Scottish legislation in respect of residential tenancies. Had he been familiar with the law in this area, he may have taken issue with other clauses of the tenancy agreement. The Applicant was not aware at that time of the true cost of the Wi-fi. The Applicant is entitled to be recompensed for his losses as a result of the unfair contract term. The Applicant paid £175 for Wi-fi costs during the tenancy. The actual costs per tenant per month were £9.74. The Applicant ought to have paid £68.18 for seven months of Wi-fi costs. The Respondent

was unjustly enriched in the sum of £106.82. The Applicant has restricted his claim to £105.

40. It was not clear to the Tribunal why the Respondent paid £875 Council Tax to 11<sup>th</sup> January 2024, if the flat was tenanted by students who were exempt from Council Tax. In any event, the tenancy agreement was clear that the Respondent was liable to pay £65 Council Tax monthly if he no longer retained student status. The Tribunal was not clear how the sum of £65 claimed by the Respondent had been reached, given that the annual cost of Council Tax was £1949.98 for 366 days, as set out in the information lodged by the Respondent. The daily rate of Council Tax was, therefore, £5.33. The Council Tax for 9 days from 31<sup>st</sup> December 2023 to 9<sup>th</sup> January 2024 was £47.97. The Applicant was liable for a third share of this sum, which equals £15.99.

### **Decision**

41. An order for payment is granted in favour of the Applicant in the sum of £89.01.

### **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.**

# H. Forbes

**7<sup>th</sup> May 2025**  
**Date**

**Legal Member/Chair**