



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/24/4625

Re: Property at 64 Drumgray Avenue, Uddingston, Glasgow, G71 7FD (“the Property”)

Parties:

Mr James Ritchie, Suite 4102, Charlotte House, 67-83 Norfolk Street, Liverpool, L1 0BG (“the Applicant”)

Mr John Prete, 64 Drumgray Avenue, Uddingston, Glasgow, G71 7FD (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mr A Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that there was no private residential tenancy between the parties.

Background

1. This is a Rule 111 application whereby the Applicant was seeking an order for payment in the sum of £25777.
2. A Case Management Discussion (“CMD”) took place on 19th May 2025, conjoined with application FTS/HPC/EV/24/4624. The CMD for both applications was continued to a further CMD, and a Direction was issued for further information and documentation. Both parties issued a response to the Direction.
3. A CMD took place by telephone conference on 15th October 2025. The Applicant was in attendance. The Respondent was not in attendance and was represented by Mr Christopher Prete, brother of the Respondent. The Applicant’s position was that there was a tenancy agreement between the parties and that the Respondent had fallen into arrears. The Respondent representative denied there was a tenancy agreement, stating there was an

arrangement whereby the Property was purchased by the Applicant with the intention that it would be transferred to Mr Christopher Prete in due course, when he could obtain a mortgage. The situation had arisen as a result of Mrs Prete lending money to the Applicant and his business partner, Mr McMaster. Mr McMaster covered the monthly mortgage payments for a period. The monthly payments are now covered by Christopher Prete.

4. The application was continued to an evidential hearing, with a preliminary issue as to whether there is a private residential tenancy in existence. The issues to be decided at the hearing were:
 - (i) Is rent lawfully due?
 - (ii) If so, what is the amount of rent outstanding that falls to be paid by the Respondent?
5. By email dated 10th November 2025, the Respondent representative lodged witness details and representations.

The Hearing

6. A hearing took place by video conference on 24th November 2025. The Applicant was in attendance. The Respondent was in attendance and was represented by Christopher Prete.

Evidence of the Applicant

7. The Applicant is the sole owner and landlord of the Property. The Applicant referred to the tenancy agreement which had been lodged, showing the monthly rental sum of £1029.27. The Applicant said the rent was due on the 24th of each month, but was rarely paid on time and regularly had to be chased up. The Applicant said he paid the deposit for the Property and had provided vouching for this, and mortgage statements. The arrears are currently £37,421. The Applicant said he had been very fair in his dealings with the Respondent. The Respondent had suffered a bereavement, and the Applicant had not pursued this matter at the time. The fact that rent was being paid monthly meant that a tenancy agreement had been constituted in Scots law.
8. The Applicant said Mr McMaster's evidence should be considered null and void. He had been the Applicant's business partner, but he had failed to honour their agreement. The Applicant had processed bankruptcy proceedings against Mr McMaster in 2022. It was his position that Mr McMaster is under investigation for fraud.
9. The Applicant said no improvements should have been required to the Property as it was brand new. He had not approved any improvements.
10. Responding to questions from the Tribunal as to why there were no rent arrears prior to 2020, if Mr McMaster was not covering the full rental payment

of £1029.27, the Applicant said he had agreed Mr McMaster could pay the sum of £493 because they were business partners. The Applicant said there was no discussion about this with the Respondent. Mr McMaster owed money to Mrs Prete. The Applicant said it was agreed that he would buy the Property and the Respondent would move in.

11. Responding to questions from the Tribunal, the Applicant said he had never met the Respondent. This did not concern him because most landlords do not meet the tenant. The position was unique in that Mr McMaster and the Applicant were partners and there was a lot of trust involved. The Applicant said he served a rent increase notice (p57 of case papers) increasing the rent to £1345.71 from 24th October 2022. The Applicant said he had been assured by Mrs Prete that the Respondent was in employment and that he was a suitable tenant. The mortgage was a buy-to-let mortgage, and the Applicant had to prove to the mortgage provider that there was a tenancy. The tenancy agreement was sent to the Respondent. Asked whether there was a covering letter with the tenancy agreement, the Applicant said he could not remember, but it was more than likely. The Applicant said he had not kept any correspondence with the Respondent. All correspondence was between Mrs Prete and Mr McMaster. The Applicant said he had regularly sent correspondence about rent arrears.
12. The Applicant confirmed he did not know who was staying in the Property. He had not been in the Property since purchasing it. The Applicant said he had regularly asked people to check the Property from the outside. Asked whether this was unusual, the Applicant said he knew the Respondent and his family, and knew they were not bad people. There was a degree of trust, and he had believed there was a very good relationship between the parties. He did not think there would be any issues inside the Property.
13. The Applicant said he reached the sum of £1029.27 as the monthly rent when applying for the mortgage. It was not the mortgage payment, but a sum he reached using a percentage. The Applicant said he was trying to be as amicable as possible in reaching this amount.
14. Responding to questions from the Tribunal regarding a message on page 279 of the case papers, the Applicant confirmed the messages on that page were between Mrs Prete and himself. Asked what he meant by 'as long as your John appreciates what you are doing for him', the Applicant said he meant John (the Respondent) should appreciate that he was being allowed to stay in the Property. Asked whether the Applicant was allowing him to stay, rather than Mrs Prete, the Applicant said that was correct.
15. The Applicant said there was de facto tenancy agreement in place. It was a unique scenario. Everything had to be in play prior to securing the mortgage. If the Respondent's family believes they have a genuine claim in respect of this matter, they need to go down another route. Monthly payments have been made, and they can only constitute one thing, which is rent.
16. There was no cross-examination of the Applicant.

Evidence of the Respondent

17. The Respondent said this was the first time he had ever seen the Applicant. The Respondent said he had never transferred money to the Applicant. There was no agreement between the parties and no correspondence. The Respondent said as far as he was aware, the Property belonged to his mother. His mother had previously purchased a property for the Respondent and his family to live in. They had outgrown that property, hence the need for a new property.
18. Responding to questions from the Tribunal, the Respondent said he had not received a tenancy agreement. The Respondent said his mother sent him to Barratt Homes, the builder, to choose tiles and flooring. The Respondent said he signed for the keys from the builder in 2018.
19. The Respondent said he only became aware of matters when the Tribunal proceedings started. The Respondent said he thought his family had kept this matter away from him to avoid causing him stress. The Respondent said what he had heard today was all lies and was all new to him. Asked whether he thought the Applicant was giving the Tribunal false information in respect of correspondence said to have been sent to him by the Applicant, the Respondent said yes. He had received no letters.
20. The Respondent explained that he had gone through a difficult period following the passing of his wife, and said that even now he is still affected by these issues.

Cross-examination of the Respondent

21. The Respondent reiterated that he did not receive any correspondence from the Applicant. The Respondent said he received Tribunal papers by personal service by Sheriff Officers. The Respondent said his mother stays with him to look after his children so he can go out to work. He thought it unlikely that anyone else would have opened his letters without informing him.

Evidence of Mrs Jean Prete

22. The witness confirmed she is the mother of the Respondent. The witness said she wanted to provide a new property for the Respondent and his family, and wanted them to live closer to her. She had spoken to the Applicant and Mr McMaster about this, having previously given money to their business. The witness said she had a successful business, but there had been a downturn following sickness, and she was unable to get a mortgage. The Applicant said he would get a mortgage for the Property until she was in a position to pay him back. The Property was bought in the name of the Applicant. The Applicant paid the deposit and legal fees for the Property. This was to be deducted from the sums owed to the witness by the Applicant. The witness paid the reservation fee for the plot. Mr McMaster paid the mortgage for a few years. The Respondent secured the plot and collected the keys for the

Property. The Respondent was not aware of the Applicant's role. In or around 2021, the Applicant got in touch with Christopher Prete regarding £7000 arrears. Christopher Prete paid this sum to bring the mortgage up to date.

23. Responding to questions from the Tribunal, the witness said the Applicant knew the Respondent was living in the Property. The witness referred to the text message whereby the Applicant said he hoped the Respondent appreciated everything. The witness said there were some bank records of money paid by her to the Applicant. Asked why Christopher Prete paid the arrears of mortgage, the witness said the Applicant had made Mr McMaster bankrupt. She and Christopher Prete had agreed to pay the arrears, but later considered the monthly sum stated by the Applicant was too high, so they undertook some research and reduced the monthly sum to £585, which they have been paying since. The witness said the Applicant was never meant to profit from the situation. The witness said Christopher Prete had asked for settlement figures and other paperwork numerous times from the Applicant.
24. The witness said the Applicant and his family were personal friends of hers. She trusted the Applicant and believed the Property would be put into Christopher Prete's name. When the Property was spoken about, it was always referred to as her house. The witness said she gave money to the Applicant to help him pay his own mortgage and to pay his children's school fees. Although she accepted the Property was in the Applicant's name, it was not a rental situation.
25. The witness said she had been naïve and taken matters on trust. She had wanted to discuss matters with the Applicant, but had been advised not to do so. The only evidence that the Property was to be transferred was the texts
26. The witness said she had not opened any letters from the Applicant to the Respondent. The witness now lives at the Property.

Cross-examination of the witness

27. The witness said she did not know the exact date when Mr McMaster was made bankrupt. The witness confirmed she knew Mr McMaster was making the monthly payments before then. The Tribunal did not allow further questioning about a property in Tenerife as it was considered irrelevant.

Evidence of Christopher Prete

28. The witness said this was never a tenancy situation. Beneficial interest in the Property lay with Mrs Prete, who intended to buy the Property. The Applicant and Mr McMaster were friends, and they all socialised together. The witness was studying at the time the Property was purchased, and he could not get a mortgage. He was studying with the intention of being involved with the business of the Applicant and Mr McMaster in due course. The Applicant was a mortgage advisor, and he agreed to take on the mortgage of the Property. It was the intention that Mrs Prete's portfolio would be transferred to the witness.

29. The witness said Mr McMaster paid the mortgage until he could no longer do so. After that, as the Property was seen as being Mrs Prete's, it was correct for the witness to pay the mortgage. The family did not want to lose the Property. The witness referred to the Applicant having fabricated matters for the Tribunal.
30. The witness said he sought meetings with the Applicant, emailing him from around May or June 2021. The witness decided that £585 was an appropriate monthly sum to pay to the Applicant. It became clear around the end of 2021 that the Applicant was calling the arrangement a tenancy arrangement. The witness said he challenged the Applicant on this by email. The witness said the situation could be resolved if the Applicant would tell him the outstanding balance on the mortgage. The witness is now able to raise a mortgage.

Cross-examination of Christopher Prete

31. The witness accepted there had been numerous conversations between himself and the Applicant, but said it had been before the so-called rent arrears. The witness agreed he had been offered the option to purchase the Property, but said purchasing at the purchase price was not in line with the agreement made. The witness said he expected to pay a sum that would reflect the equity in the Property, and that the Applicant had tried to get him a mortgage deal less than a month after the purchase of the Property. The witness said he offered to sit down with the Applicant to discuss matters.

Evidence of Robert McMaster

32. The witness is a retired property professional. The witness said as far as he was aware, the Property was purchased for the benefit of Mrs Jean Prete. The witness was not aware of any tenancy agreement. When the Property was purchased, the Applicant paid £97,000 for the deposit and fees. The witness agreed to pay £493 per month, which he understood to be the mortgage. The Applicant then said the monthly payments had increased to £1024. The witness said he paid that for as long as he could, then Mrs Prete took over the payments.
33. Responding to questions from the Tribunal as to why he made payments, the witness said that, over a period from 2011 or 2012, Mrs Prete had given funds to him and the Applicant to pay debts, legal fees, and stock. This was a way of repaying her. Asked whether the debt was fully paid by his monthly payments, the witness said he was not privy to all the funds coming across, but he presumed Mrs Prete and Christopher Prete had records. Asked whether there had been any discussion about paying the rent for the Respondent, the witness said there had not been any such discussion – it was always intended to be payment for the mortgage. The witness made payments directly to The Mortgage Works for some years, and then to the Applicant. Asked why there were no records of the funds paid by Mrs Prete, the witness said there was an element of friendship, and it was done on an honourable basis. Asked how he would know when the debt was paid, the

witness said he did not have all the documentation. The witness said he did not even know roughly how much was outstanding in respect of funds paid by Mrs Prete.

Cross-examination of the witness

34. The witness conceded he did not have a shareholding or any involvement in the company that raised the deposit for the Property. The Applicant asked a question on the matter of a property purchased in Tenerife, saying it showed there was an open-ended agreement with Mrs Prete. The Tribunal refused to allow any further questioning on this matter, as it was not relevant to the matters before the Tribunal.

Summing up by the Applicant

35. The Applicant said it is clear there are rent arrears, and the ground of eviction is met. The rent statement is detailed and shows arrears of £37,421.72. The account has been in arrears for 61 months and the arrears are substantial. Any suggestion that Mr McMaster was involved is irrelevant. The payments made were to cover rent. The Applicant said his company never received money from Mrs Prete. Ground 13 would also be met, as there have been unauthorised improvements to the Property.
36. The Applicant made Mr McMaster bankrupt. He has been involved in fraud. The Applicant has lost substantial sums through Mr McMaster's lies.
37. The Applicant said the evidence is very clear. He requested that the Tribunal grant an order for payment. The Applicant said he has complied with all his responsibilities as landlord. No effort has been made to resolve matters. The Applicant said the Tribunal is not the correct forum to determine quasi-ownership claims.

Summing up for the Respondent

38. The Respondent representative said no tenancy agreement had ever existed. The Applicant secured the mortgage on 14th February 2018 and the keys were picked up the following day. The Applicant's message regarding hoping the Respondent appreciated what was being done for him by his mother showed the situation was not a landlord/tenant relationship. The Applicant owned the Property as a matter of convenience, knowing the intention was to transfer it to Mrs Prete. There was no discussion about monthly rent, the tenancy agreement or a landlord/tenant relationship. All payments made were for the mortgage. No rent receipts were issued. There was no agreement on the rental amount. Payments of the mortgage were made by Mr McMaster due to his debt to Mrs Prete. The intention was that he would pay the mortgage until the Property was transferred to Mrs Prete or Christopher Prete. Mrs Prete was the beneficial owner of the Property. There is a background to the debt which is clear from the bank statements lodged. The Property was sourced through Mrs Prete's estate agent. The Respondent dealt with Barratt Homes and chose carpets, blinds, etc.

39. The Respondent representative referred to the written representations, which outline challenges to the tenancy agreement. The wrong address and email address was used for the Respondent. The Applicant had no dealings with the Respondent. The rental amount was fabricated. Reference was made to Appendix I, which indicated that the Applicant was clearly informed of the situation. Emails within this appendix show that the Applicant agreed that Mr McMaster would make payments into his account until the Property could be purchased and financed elsewhere. In further messages, the Applicant had referred in an email dated 18th January 2019 to the Property as being 'Jean's property' and that it needed to be remortgaged or sold as soon as possible (Appendix J).
40. The Respondent representative said the Applicant had failed to provide a signed copy of the tenancy agreement. No bank statements had been provided. Payments had been made to the Applicant in line with the mortgage. The Respondent representative invited the Tribunal to scrutinise the emails in respect of landlord registration. Some of the emails were from Registers of Scotland who do not monitor landlord registration.
41. The Respondent representative said that the Applicant attempted to get access following submissions lodged on behalf of the Respondent (Appendix K). This caused stress to the Respondent and Mrs Prete. The Respondent representative said Appendix H showed the Applicant had provided misleading information to landlord registration.
42. The Respondent representative said the Applicant only began the eviction proceedings after falling out with Mr McMaster. The Applicant cannot override Jean Prete's beneficial interest in the Property. The bank statements lodged show that the Applicant received money from Mrs Prete, despite the Applicant denying this. Mrs Prete instigated the purchase of the Property. Mr McMaster made the mortgage payments, which were then made by Christopher Prete. The Tribunal should find that no tenancy agreement exists.

Response from Applicant

43. The Applicant said he can prove landlord registration. He does not need to make fictitious claims. Landlord registration was required for the buy-to-let mortgage. The Applicant said he sticks clearly to the law. The Respondent's family have continued to make payments. They were given an opportunity to purchase the Property in 2021. There is zero evidence of any agreement between the parties regarding the transfer of the Property.

Findings in Fact and Law

44.

- (i) The Property was built by Barratt Homes and completed in or around February 2018.

- (ii) Mrs Jean Prete paid the reservation fee to the builder for the Property on or around 17th June 2017.
- (iii) The Applicant paid the deposit on the Property.
- (iv) The Applicant obtained a buy-to-let mortgage for the Property.
- (v) The Applicant paid the legal fees relating to the purchase of the Property.
- (vi) The Applicant is the heritable proprietor of the Property which was registered on 14th March 2018.
- (vii) The Applicant's date of entry to the Property was 15th February 2018.
- (viii) The Respondent liaised with Barratt Homes on fittings and finishings within the Property.
- (ix) The Respondent collected and signed for the keys from Barratt Homes upon completion of the Property.
- (x) The Respondent moved into the Property with his family in February 2018.
- (xi) The Respondent believed the Property belonged to Mrs Jean Prete.
- (xii) The Respondent continues to reside in the Property.
- (xiii) There was no agreement between the parties to enter into a tenancy agreement.
- (xiv) The Property was not let to the Respondent by the Applicant.
- (xv) There is no private residential tenancy.
- (xvi) No rent is lawfully due by the Respondent to the Applicant.

Reasons for Decision

39. At common law, one of the cardinal elements of a lease is that parties must have reached *consensus in idem* or agreement on the same thing. There was no agreement between the parties that they would enter into a landlord/tenant relationship in respect of the Property. There was no agreement between the parties on the terms of the tenancy agreement, including the rent. The Tribunal accepted the unchallenged evidence of the Respondent that he believed the Property belonged to Mrs Prete, that there was never any discussion with him from the Applicant or anyone else about entering into a private residential tenancy, that the Respondent did not consider himself to be a tenant, and that the Respondent had no knowledge of any purported tenancy.

40. The Tribunal accepted the evidence of the Respondent that he did not receive a private residential tenancy agreement before moving into the Property, and, consequently, did not sign such a tenancy agreement. The tenancy agreement produced may well have been drawn up prior to the purchase of the Property for the purpose of securing a buy-to-let mortgage, but there was no evidence that it was ever received by the Respondent for signature. The evidence that the address and email address on the tenancy agreement were not those of the Respondent, and communication in respect of the Property appears to have taken place between the Applicant, Mrs Prete and Christopher Prete, without any input from the Respondent, tended to support the evidence of the Respondent in this regard. For the foregoing reasons, it could not be concluded at common law that there was *consensus in idem* between the parties.

41. The Private Housing (Tenancies) (Scotland) Act 2016 provides at section 1 that a tenancy is a private residential tenancy where—

(a) the tenancy is one under which a property is let to an individual (“the tenant”) as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant's only or principal home ...

In this case, the requirements of section 1(b) are met in that the Respondent occupies the Property as his only or principal home, but the requirements of section 1(a) are not met, as, if there was no meeting of minds, or *consensus in idem*, the Property could not be considered to have been let to the Respondent.

42. The actings of the parties did not support the contention that the Respondent was the tenant and the Applicant the landlord. The Respondent secured the Property plot by attending regularly at the development. The Respondent chose the fittings and finishings for the Property. The Respondent collected the keys from the builder. The Applicant was never in the Property. The Respondent never paid any rent to the Applicant. Monthly sums have been paid to the Applicant by Mr McMaster and Christopher Prete, the latter of whom continues to make monthly payments. No documentary evidence exists to show that they were or are paying rent on behalf of the Respondent. It is not the case, as suggested by the Applicant, that the mere paying of a monthly sum constitutes a tenancy agreement. The Tribunal was not persuaded, on the balance of probabilities, that the sums paid constituted rent.

43. In considering the actings of the parties, the Tribunal took into account the message from the Applicant to Mrs Prete whereby the Applicant stated that he hoped the Respondent appreciated what his mother was doing for him, and the message whereby the Applicant referred to the Property as ‘Jean’s property’. These messages tended to support the evidence led on behalf of the Respondent that some sort of agreement existed between the Applicant

and Mrs Prete to the effect that the Property was intended to be Mrs Prete's and would be transferred to her in due course. The evidence of the Applicant that he accepted less than half of the so-called monthly rent from Mr McMaster for a significant period because he was the Applicant's business partner, did not tend to support the assertion that the monthly payment was rent. Nor did the fact that Mr McMaster paid sums directly to the mortgage provider support the assertion that the monthly payment was intended to be rent.

44. The Applicant clearly owns the Property. Scots Law does not, as a general rule, recognise the concept of beneficial ownership referred to by the Respondent representative; therefore, no findings were made that Mrs Prete has any right of ownership.

45. There is a convoluted and unclear background to this application. There was clearly a past relationship between Mrs Prete, the Applicant, Mr McMaster, and Christopher Prete whereby money changed hands. Although the Applicant denied receiving payment from Mrs Prete, there was evidence of transfers of money made by the Pretes to bank accounts which appeared to belong to the Applicant, including three transfers totalling £20,000 on 20th February 2018. The Tribunal made no findings in this regard. Although it was necessary to hear some evidence of the background relationship, it was not of great relevance to the matters to be decided by the Tribunal.

46. It follows that, if there was no private residential tenancy, no rent is lawfully due by the Respondent to the Applicant.

Decision

47. There is no private residential tenancy. No rent is lawfully due; therefore, the order for payment is 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.

H Forbes

Legal Member/Chair

2nd December 2025
Date