



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/19/1972

Re: Property at 119 Woodmill Road, Dunfermline, KY11 4AE (“the Property”)

Parties:

Dunfermline Islamic Centre Limited, 125 Woodmill Road, Dunfermline, KY11 4AE (“the Applicant”)

Mr Amanat Hussain Shah, 1 Pitmedden Road, Dunfermline, KY11 8FJ (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member), Tony Cain (Ordinary Member) and Helen Barclay (Ordinary Member [Reviewer])

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to an order for payment by the Respondent in the sum of £4550.00

1. By application dated 20 June 2019 the Applicant applied to the Tribunal for an order for payment in respect of alleged rent arrears due in respect of the property. The Applicant provided the Tribunal with a copy of the Tenancy Agreement, invoices and bank statements in support of the application.
2. By Notice of Acceptance dated 11 July 2019 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned.
3. Intimation of the Case Management Discussion was given to the Applicant's representative's iResolve Legal by post on 12 July 2019 and to the Respondent by Sheriff Officers on 18 July 2019.

4. The Respondent submitted written representations to the Tribunal dated 31 July 2019.
5. A Case Management Discussion was held at Dunfermline on 26 August 2019. After hearing from the parties a hearing was fixed. The issues to be resolved were noted as:
 - a) Whether the applicant agreed to provide accommodation free of charge as a result of the Respondent's appointment as Imam;
 - b) Whether the lease signed by the parties is voidable due to undue influence/coercion by the applicant prior to the lease being signed; and
 - c) Whether the duration of the lease affects the competency of the present action (this may be dealt with as a preliminary matter.
6. The respondent intimated a list of witnesses by letter dated 18 September 2019. The Applicant lodged an inventory of Productions on 21 October 2019.

The Hearing

7. A Hearing was held at Fife Voluntary Action, Kirkcaldy on 22 October 2019. The Applicant was represented by Ms Rachel Thomson. The Respondent attended personally and was represented by Mr Khalid Hussain. There were two witnesses for the applicant, Mr Ajaz Mohammed, Chairperson of the applicant and Mr Mohammed Akbar, Vice-treasurer of the Applicant. The respondent had two additional witnesses, Mr Iftikhar Choudhary and Mr Ghulam Asam.
8. The Tribunal queried whether any issue was taken with regards to the witness lists not being exchanged between the parties and noted there was no objection. The tribunal also noted that there was no objection to the Applicant's Inventory of Productions being lodged late. It was accepted that most of the documents in the Inventory had previously been submitted on behalf of the Applicant.
9. The Tribunal heard submissions from the parties representatives with regards to the preliminary matter namely whether the error in the date of the lease affected the competency of the proceedings. For his part Mr Hussain submitted that as the end date of the tenancy was said to be before the commencement date this rendered the whole agreement null and void. He suggested that the document had been prepared by Mr Akbar who had been in business for 40 years and would have known the importance of not having mistakes in a legal document. He also pointed out that the Respondent's name and the date and place of signing had all been completed prior to the respondent signing the document. For her part Ms Thomson submitted that a simple error in the date did not affect the competency of the proceedings. She said it was clear that the end date of the tenancy had intended to be 6 January 2018. In any event the Respondent had continued to live in the property until April 2019. In response to a question from the Tribunal Mr Hussain accepted that rent for the property had been paid and accepted and that the Respondent had occupied the property.

10. Having heard the parties representatives submissions the Tribunal was satisfied with regards to the preliminary issue that notwithstanding the error in the end date of the lease that this was not fatal to there being a tenancy agreement given that it was accepted that rent was paid and the Respondent had taken occupation of the property. The proceedings were therefore competent.

11. Mr Mohammed gave evidence that he was Chair of the Applicant and a trustee and director. He had been chair for 10 years. He was a restaurateur. He explained that the Respondent had previously lived in South Africa. He said he had been involved in recruiting the Respondent as Imam for the mosque. He had been required to obtain a sponsorship licence and had assisted in obtaining a Tier 5 visa for the Respondent to allow him to come as a religious worker and then later to obtain a Tier 2 visa as a Minister of Religion so that he could bring his family to the UK from South Africa. Mr Mohammed explained that the Respondent had been employed by the mosque from about 2011 or 2012 first as a religious worker then as Imam. He confirmed that Clause 18 of the Respondent's contract of employment stated that "accommodation does not form part of your employment". He confirmed that when the Respondent lived on his own he was given free accommodation in a room in the mosque but this was not large enough for the entire Respondent's family. When they arrived accommodation was obtained at 57 Woodmill Crescent. The respondent had paid rent for this property at a rent of £500.00 per month. It was rented privately from another member of the mosque. Mr Mohammed said that the mosque could not have sustained paying the rent for the Respondent as it did not have the finances to allow this. Mr Mohammed went on to say that the mosque purchased property adjoining the mosque in 2016. It required to be refurbished. This took six or eight months. Mr Mohammed said the property had been purchased for the Imam to live in but not rent free. The rent was going to be £500.00 the same as the Respondent had been paying for the property at 57 Woodmill Crescent. The rent had been kept the same as it had been felt the Respondent could afford to pay that amount. Mr Mohammed referred the Tribunal to the Minute of the Committee meeting of 19 October 2016 which confirmed that the rent would be £500.00 per month. Mr Mohammed denied that he had ever made any threats to the Respondent. He denied he would terminate the Respondent's employment if he did not sign the lease. He spoke of the Respondent having issues with a neighbour where he had been staying and had suffered racial discrimination and he had tried to assist the Respondent by providing new accommodation. Mr Mohammed also pointed out that the mosque had purchased the property and another adjoining property in order to improve parking around the mosque. Mr Mohammed explained that the majority of the money used to purchase the property had come from the mosques own funds but some had come from donations from the members and from short term interest free loans. In response to questions from Mr Hussain, Mr Mohammed denied that it had been necessary for the applicant to provide the Respondent with rent free accommodation in order to comply with Home office Sponsorship Licence provisions.

12. The Respondent submitted that he had been forced to pay £500.00 per month in rent in order to keep his job. The tenancy of 57 Woodmill Crescent had not been in his name but in the name of the applicant but he had to pay the rent. He had income of £250.00 per week and could not afford to pay rent of £500.00 per month as well as utilities, council tax and other outgoings and look after his family. He was not entitled to any state benefits. He told the Tribunal that the agreement had been that he would be given free accommodation. He went on to say that he had made announcements to the members asking them to donate money for the purchase of the property as it would be provided for the Imam to live in. According to the Respondent he was forced and harassed to sign the lease for the property and if he did not his visa would be cancelled. He said he had tried to reach an agreement that the rent could be restricted to £250.00 per month but that this was not agreed. He said he had been given the keys to the property and moved in to it before being given the lease. He said if the rent was going to be £500.00 he might as well have stayed at 57 Woodmill Crescent. He was given no alternative other than to move and to sign the lease or lose his job.
13. Mr Mohammed confirmed that the present Imam was single and was living rent free in the room in the mosque that the Respondent had stayed in originally. If another Imam was appointed and he had family he would live in the property and would have to pay rent in the same way as the Respondent.
14. Mr Akbar stated that he had been present when the Respondent had signed the lease. He said the Respondent had been given time to read it and his behaviour had been normal. It had taken 30 or 40 minutes. He thought the Respondent would have been familiar with leases as he had previously lived in rented properties. He denied there had been discussions about the Respondent living in the property rent free. He accepted the Respondent had wanted to not pay rent and that the property had been bought as accommodation for the Imam. Mr Akbar said he had been aware that the Respondent had spoken to a member of the committee, Mr Miah about living in the property rent free after he had signed the lease.
15. Mr Mohammed pointed out that the applicant had borrowed money to purchase the property and had to charge rent in order to return it as the mosque did not have the financial ability otherwise to repay the loans.
16. Mr Choudhary stated that he believed the property had been purchased so that the Imam could live there free of charge. It was his understanding that although it was not mentioned that the Imam would live rent free this is what usually happened up and down the country.
17. Mr Asam confirmed that he had made a donation and a loan in respect of the purchase of the property. It had been his understanding that the Imam would live in the property rent free but this had not been stated clearly. He confirmed that he would still have probably made a donation for the purchase of the property even if he had known the imam was to be paying rent but possibly would not have lent money.

18. It was agreed between the parties that the Respondent had paid rent of £500.00 in respect of the property from July 2017 until the Respondent's employment with the Applicant ended in June 2018. It was also agreed that three further payments of £150.00 were made on the Respondent's behalf made thereafter. The Respondent left the property in March 2019. No further rental payments were made. It was accepted that if the Respondent was due to pay rent for the property the amount due would amount to £4550.00
19. Mr Mohammed advised the Tribunal that although the Respondent's salary was paid at minimum wage the Respondent did have additional income from gifts made to him at Ede and during Ramadan and from members when their children could recite certain passages of the Koran. This amounted to several thousand pounds per year and in addition the Respondent's wife had been paid by the mosque as well.
20. Mr Hussain attempted to introduce some documents relating to an ongoing unfair dismissal claim that was being pursued by the Respondent against the Applicant but as these had not been intimated in advance in accordance with the Tribunal Rules the tribunal did not accept these. It was clear that the Respondent could have lodged these well in advance of the hearing and the Tribunal had to be fair to both parties. It was also hard to see what relevance the documents might have given the unfair dismissal claim was still ongoing.

Findings in Fact

21. The Applicant provided the Respondent with rent free accommodation when he lived in a room in the mosque.
22. That arrangement ended when the Respondent's family joined him in Dunfermline once he had obtained a Tier 2 Visa.
23. There was no obligation on the Applicant in terms of its sponsorship licence to provide the Respondent with free accommodation once he had his visa
24. The Respondent's employment contract stated that accommodation was not provided.
25. The Respondent paid rent of £500.00 per month for the property at 57 Woodmill Crescent.
26. The property at 119 Woodmill road was purchase with the intention of providing accommodation for the Imam of the mosque. Part of the cost of purchase came from members donations.
27. Some members believed that the property would be provided for the Imam rent free.

28. The Respondent attempted to reach an agreement with the Applicant that he be given the use of the property either rent free or at a reduced rent of £250.00 per month. The applicant did not agree to this.
29. The Applicant offered the property to the Respondent at a rent of £500.00 per month.
30. The Respondent signed a tenancy agreement for the property agreeing to pay rent of £500.00 per month.
31. The Respondent felt under pressure to agree to pay rent.
32. The Respondent paid rent on the property until his employment was terminated by the Applicant.
33. The rent arrears outstanding amounts to £4550.00.

Reasons for Decision

34. Taken at its simplest there is a valid tenancy agreement obliging the Respondent to pay rent of £500.00 per month by way of rent for the property. He stopped paying rent other than £450.00 after he lost his employment with the Applicant but remained in the property for ten months. He is therefore due arrears of rent of £4550.00.
35. Matters are complicated however by the allegations that either the Applicant was obliged to provide rent free accommodation or that the Applicant coerced or exercised undue influence on the Respondent to pay rent.
36. The tribunal was satisfied that had the Respondent remained living in a room in the mosque he would not have been expected to pay rent. However the accommodation in the mosque was not suitable for the Respondent's family and it seemed to the Tribunal that it would have been known to him that this would have been the case in advance of bringing them to the UK. Accommodation was provided on a temporary basis but it then seems that more permanent accommodation was obtained at 57 Woodmill Crescent and over some 18 month to two years the Respondent paid rent for this property. The Respondent did not lead any evidence that he had raise objections with the mosque committee over this period about the arrangement. It seems that his objections came about after he had asked mosque members to donate money towards the purchase of the property. It does appear that some members did think that the property would be provided for the use of the Imam rent free but this did not form part of the Respondent's conditions of employment.
37. The Tribunal accepted that the respondent felt under pressure to sign the tenancy agreement. It accepted that he had moved into the property before being given the lease. However he had discussions with members of the committee in advance of moving in and would have been well aware that the

rent to be paid was going to be the same as he had been paying for 57 Woodmill Crescent. It is a fact that employees can feel pressurised to accept a condition of their employment they do not like or want to accept. That however does not mean that an employer is exerting undue influence or coercion. Whilst the Respondent's ability to retain his visa and work in the UK is a factor it did seem to the Tribunal that the rent issue was less important to the Respondent when he was on good terms with his employers but that it may have become more important as the relationship deteriorated.

38. What is clear is that once the Respondent's employment was terminated he could not have been entitled to rent free accommodation and he remained in the property not paying rent for 10 months except for payment of £450.00. As the Tribunal was not satisfied in any event that the Applicant was obliged to provide the Respondent with free accommodation and as the Tribunal was not satisfied that the Respondent could show that the Applicant had exercised undue influence by virtue of its position as employer or coercion through threats against the Respondent it was satisfied that the Applicant was entitled to the order sought.

Decision

39. The Tribunal finds the Applicant entitled to an order for payment by the Respondent in the sum of £4550.00.

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.

Graham Harding
Legal Member/Chair

22 October 2019
Date