



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (Act)

Chamber Ref: FTS/HPC/CV/23/0686

Re: Property at 11/3 South Maybury, Edinburgh, EH12 8NX (“the Property”)

Parties

**Gylemuir Properties Limited (Applicant)
Mr Emmanuele Belotti (Respondent)**

Gylemuir Properties Limited (Applicant’s Representative)

Tribunal Members:

Alan Strain (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for reduction of the Private Residential Tenancy Agreement (PRTA) entered into between the Parties and commencing 19 March 2022 be granted.

Background

This is an application under Rule 111 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (Rules)* and section 71(1) of the Act in respect of an application for reduction of a PRTA entered into between the Parties and commencing 19 March 2022.

The Tribunal had regard to the following documents:

1. Application received 6 March 2023;
2. Private Residential Tenancy Agreement (**PRTA**) commencing 19 March 2022;
3. Inventory of Productions containing the following documents:
 - a. Copy of field report from Stirling Park LLP, Sheriff Officers dated 22nd February 2023

- b. Copy of tracing report from Stirling Park LLP, Sheriff Officers dated 2nd March 2023
 - c. Copy of tenancy agreement dated 18th March 2022
 - d. Copy of Respondent's bank statement dated 4th February 2022
 - e. Copy of Respondent's payslip dated 1st December 2021
 - f. Copy of Respondent's Italian national identity card
 - g. Copies of emails between The City of Edinburgh Council and Applicant dated 2nd May 2022 and 3rd May 2022
 - h. Copies of emails between City Glass UK Limited and Applicant dated 24th May 2022 to 23rd June 2022
 - i. Copy of transactions report from Applicant's bank account dated 18th February 2023
 - j. Copy of email from Applicant to Respondent dated 30th January 2023
 - k. Copy of delivery receipt dated 30th January 2023
 - l. Copy of email from Applicant to Respondent dated 4th February 2023
 - m. Copy of delivery receipt dated 4th February 2023
 - n. Copy of letter from Applicant to Respondent dated 4th February 2023
 - o. Copy of pre-action protocol letter from Applicant to Respondent dated 4th February 2023
 - p. Copies of text messages from Applicant to Respondent dated 30th January 2023 and 1st February 2023
 - q. Photograph of letter to Mr Gabriel Malasi dated 4th February 2023
 - r. Copies of emails between Pimlico Plumbers Limited and Applicant dated 8th February 2023
 - s. Copy of letter from Applicant to Respondent dated 22nd February 2023
 - t. Copy of certificate of postage dated 23rd February 2023
4. Certificate of Service of Tribunal CMD Notification on the Respondent by Sheriff Officers dated 23 March 2023.

Case Management Discussion (CMD)

The case called for a CMD by conference call on 30 March 2023. The Applicant participated and was represented by Mr Calvin Gordon, Director and Company Solicitor. The Respondent did not participate and was not represented.

The Tribunal delayed the start of the CMD to see if the Respondent would participate but he did not.

The Tribunal were satisfied that the Respondent had received notification of the Case Management Discussion and that the Tribunal could determine the matter if it considered it had sufficient information to do so and the procedure was fair. The notification also advised the Respondent that he should attend and the Tribunal could determine the matter in absence if he did not.

The Applicants' Representative spoke to the facts contained in the Paper Apart to the application and under reference to the Productions.

The PRTA had been induced and entered into by fraud. The Applicant's Representative invited the Tribunal to reduce the PRTA on the grounds of fraud. He also informed the Tribunal that he had a conversation by WhatsApp with the

Respondent on 27 March 2023 during which the Respondent accepted he had acted fraudulently.

The Tribunal then considered the documentary evidence it had received and the submissions made. In so far as material the Tribunal made the following findings in fact:

1. The Applicant is the registered proprietor of the Subjects. The Subjects are registered in the Land Register of Scotland under Title No. MID165424. The Tenancy between the Applicant and the Respondent commenced on 19th March 2022. The tenancy agreement was executed on 18th March 2022. The rent is £950.00 per month.
2. The Respondent paid a deposit of £950.00 prior to the Tenancy commencing.
3. On 16th March 2022, the Respondent provided the Applicant with copies of a bank statement from Lloyds Bank plc and a payslip from Pimlico Plumbers Limited as proof of his address and income. The Respondent also provided the Applicant with a copy of his Italian national identity card as proof of his identity. The Applicant's director, Calvin Andrew Manson Gordon, examined the Respondent's Italian national identity card on 18th March 2022. The bank statement and the payslip were sent to the Applicant by electronic means.
4. On 2nd May 2022, the Applicant received an email from The City of Edinburgh Council advising that Mr Zhaklin Malasi wished to change the council tax for the Subjects into his name. On 3rd May 2022, the Applicant advised The City of Edinburgh Council by email that it did not know who Mr Zhaklin Malasi was and that the Respondent was the tenant under the Tenancy.
5. On 18th May 2022, the Respondent failed to provide access to a glazing contractor to fix windows at the Subjects. The Respondent did not respond to telephone calls or text messages from the glazing contractor thereafter.
6. On 25th August 2022 and 27th August 2022, the Applicant's director attended at the Subjects to carry out an inspection. The Applicant's director was unable to gain access to the Subjects on said dates but noticed on one of those dates that there was activity within the Subjects.
7. On 1st September 2022, the Applicant's director attended at the Subjects again and gained access. The Applicant's director noted that a person purporting to be the Respondent's cousin was there. The Applicant subsequently became suspicious about who was residing in the Subjects. The Applicant also noted from its bank account that the rent had been paid by Mr Zhaklin Malasi since March 2022.
8. On 19th January 2023, the rent was not paid by the Respondent. The Applicant became more suspicious and contacted the Respondent by email, text message and letter. Copies of the letters, the emails, the delivery receipts and the text messages were produced.
9. The rent due on 19th February 2023 was not paid by the Respondent.
10. On 20th February 2023, the Applicant received a voicemail purporting to be from the Respondent advising that he was in hospital for an operation and that the rent would be brought up-to-date in ten days. The Applicant could not determine whether the voicemail was actually from the Respondent. The Applicant previously noted that the Respondent had changed mobile telephone number prior to the Tenancy commencing.
11. When the Applicant's director delivered a letter by hand to the Subjects on or around 5:00pm on 4th February 2023, nobody answered the front door despite lights

being on in the Subjects. The Applicant's director also noted that mail addressed to Mr Gabriel Malasi was in the external letter box at the main entrance. A photograph of the mail taken by the Applicant's director was produced.

12. On 5th February 2023, the Applicant's director examined the bank statement and payslip provided by the Respondent in more detail. On 6th February 2023, the Applicant's director attended the Bank of Scotland's Corstorphine branch in Edinburgh to enquire about the account specified on the bank statement provided by the Respondent. The bank manager advised the Applicant's director that the account detailed on the bank statement did not exist and could not be a closed account. On closer inspection the Applicant's director noticed that the bank statement had inconsistencies and subtle spelling mistakes.

13. The Applicant also wrote to Pimlico Plumbers Limited on 8th February 2023 to confirm whether the payslip provided by the Respondent was genuine. Pimlico Plumbers Limited confirmed by email on 8th February 2023 that the payslip was not genuine and that the Respondent had never worked for them. A copy of an email from Pimlico Plumbers Limited was.

14. The bank statement and the payslip from the Respondent are forgeries. It is not known to the Applicant whether the Italian national identity card is also a forgery.

15. Officers from Police Scotland attended the Applicant's registered office on 12th February 2023 to investigate matters. The Applicant is awaiting the outcome of Police Scotland's enquiries.

16. The Respondent deliberately sought to deceive the Applicant to obtain the Tenancy at the Subjects. The Applicant would not have granted the Tenancy to the Respondent if truthful information and documentation had been provided by the Respondent.

17. In terms of clauses 44.1.8 and 44.1.9 of the PRTA the Respondent declared to the best of his knowledge and belief that he had made full and true disclosure of all information sought by the Applicant and that he had not knowingly or carelessly made any false or misleading statements, whether written or oral, which may have affected the Applicant's decision to grant the Tenancy. The Applicant relied upon the bank statement, the payslip, the Italian national identity card and the verbal representations made by the Respondent. The Applicant has been a victim of a fraud.

18. Other individuals are residing in the Subjects. The Applicant believes that Mr Zhaklin Malasi and Mr Gabriel Malasi (the Occupiers) are residing in the Subjects. The Applicant believes that the Occupiers have been residing in the Subjects since the Tenancy commenced.

19. The Applicant has and is suffering loss as a direct consequence of the Respondent's fraud.

20. Restitutio in integrum is possible albeit the Applicant will be entitled to damages that will offset any sum due to the Respondent. The Applicant has lodged a separate Application for damages against the Respondent for the losses that it has incurred as a direct consequence of his fraud.

Decision and Reasons

The Tribunal was satisfied that the Applicant had been induced to enter the PRTA by the fraudulent representations of the Respondent. As a consequence of that fraud the Respondent suffered and continues to suffer loss and damage. Rent due was not

paid and is not being paid. The Property is occupied by persons without right, title or interest to be there.

The Tribunal considered that restitutio in integrum was possible.

In the circumstances the Tribunal was satisfied that the PRTA should be reduced on the grounds of fraud and grants the order of reduction accordingly.

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.

30 March 2023

Legal Member/Chair

Date