



**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/20/1758**

**Re: Property at 82 Gordon Street, Aberdeen, AB11 6EW (“the Property”)**

**Parties:**

**Mr Craig Watterson, 100 Millbrook Road, North Haven, Connecticut, CT 06473,  
United States (“the Applicant”)**

**Mr Dawid Wilczynski, Ms Maja Wilczynska, 19 Gardner Road, Aberdeen, AB2  
5TB (“the Respondent”)**

**Tribunal Members:**

**Alastair Houston (Legal Member) and Angus Lamont (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that an order for payment of NINE POUNDS AND NINETY  
NINE PENCE (£9.99) be made in favour of the Applicant.**

**1. Background**

- 1.1 This is an application for payment of various sums which the Applicant alleged fell due under the written tenancy contract between the parties. These sums included unpaid rent, charges in respect of late payment of rent, cleaning fees and the cost to replace appliances.
- 1.2 Following a Case Management Discussion and direction issued by the Tribunal, the Applicant clarified that only the sums of £2825.50 in unpaid rent and £9.99 being the cost of a replacement toaster were being sought. This followed the deposit paid by the Respondents under the tenancy agreement being retained by the Applicant.
- 1.3 Both the Applicant and the Respondents had lodged written submissions together with documents in support of their respective positions. These

included copies of the written tenancy agreement and subsequent extensions, emails and a document indicating the cost of the replacement toaster.

## **2. The Hearing**

- 2.1 The Hearing took place on 8 March 2021 by way of teleconference. The Applicant was not present and was represented by Ms Lisa Campbell of Stonehouse Lettings. Both the Respondents were personally present with the Second Respondent being assisted by the partner of the First Respondent with interpretation as she did not speak English.
- 2.2 The Tribunal noted that a request for a postponement had been submitted by the First Respondent on 1 March 2021 due to him having to work offshore. This had been accompanied by a further written submission. As the First Respondent was present, the Tribunal confirmed that the request for a postponement was not insisted upon.
- 2.3 The Tribunal further noted that the submissions lodged by the First Respondent were out with the time frame specified by the direction of the Tribunal dated 7 January 2021. Following a brief adjournment to allow the Applicant's Representative to consider these, she confirmed there was no objection to these being lodged. Accordingly, the Tribunal allowed these to be received.
- 2.4 The Tribunal confirmed the sums sought by the Applicant with their representative. As the costs of the cleaning incurred by the Applicant were no longer being sought, the Tribunal confirmed with the parties that this no longer formed part of the application and would not be considered by the Tribunal. The First Respondent confirmed that the cost of the replacement toaster was accepted as being due.
- 2.5 Ms Campbell indicated that there was no further oral evidence to be given to the Tribunal. The Respondents also indicated that they did not have any further evidence to give to the Tribunal however, the Tribunal sought to clarify one matter with them, regarding the document titled "Minute of Lease" which sought to extend the tenancy from 1 July 2019. The First Respondent confirmed that he had not read the document before signing it. He understood that it did not make any material changes to the tenancy agreement between the parties. The Second Respondent confirmed she did not speak English and relied upon the First Respondent's understanding of the document and for him to deal with matters on her behalf.
- 2.6 The Tribunal then offered the opportunity to the parties to make any submissions in support of their positions. Both the Applicant's representative and the Respondents indicated they had nothing to add beyond the written material lodged. Accordingly, the Tribunal concluded the Hearing with a written decision to be issued.

### **3. Findings in Fact**

- 3.1 The Short Assured Tenancy agreement between the parties commenced on 1 July 2017 and continued until 1 July 2018. The tenant in terms of the written tenancy contract was Dawid Wilcynski, Maya Wilcynska and Dorota Slupczewska.
- 3.2 The Short Assured tenancy agreement was expressly extended until and including 30 June 2019.
- 3.3 Prior to 1 July 2019, Dorota Slupczewska moved out of the Property.
- 3.4 The parties entered into a new written tenancy contract commencing on 1 July 2019. From 1 July 2019, the tenant in terms of the written tenancy contract was Dawid Wilcynski and Maya Wilcynska.
- 3.5 The rent payable under the tenancy contract was £800.00 per calendar month.
- 3.6 On 27 September 2019, the First Respondent made a request to terminate the tenancy, with two months' notice being given, with the consent of the Applicant. This request was refused.
- 3.7 Between 28 and 31 January 2020, the First Respondent emailed Stonehouse Lettings, the letting agent for the Property, seeking to terminate the tenancy as of 1 March 2020.
- 3.8 Both the Respondents had vacated the Property as of 28 February 2020.
- 3.9 Rent was paid by the Respondents up to and including 28 February 2020.
- 3.10 The Respondents were required to provide 28 days' notice in order to terminate the tenancy.
- 3.11 The tenancy contract ended on 1 March 2020.
- 3.12 The Respondents are liable for the cost of replacing a toaster provided under the terms of the tenancy contract.

### **4. Findings in Fact and Law**

- 4.1 The tenancy contract between the parties commencing on 1 July 2019 is a Private Residential Tenancy agreement within the meaning of Section 1 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act").

- 4.2 In terms of Section 49 of the 2016 Act, the Respondents were required to give the minimum notice period of 28 days to terminate the tenancy, there being no valid agreement between the parties to extend the notice period.

## **5. Reasons for Decision**

- 5.1 The parties' positions were relatively clear when considering the submissions that had been lodged. The Applicant considered that the Respondents were occupying the Property by virtue of a Short Assured Tenancy agreement which was due to come to an end on 1 July 2020. Under this agreement rent was payable at the rate of £800.00 per month. The Respondents had vacated the Property at the end of February 2020 which they were not entitled to do. Accordingly, rent which was due for the months of March, April, May and June 2020 went unpaid. The Respondents contended that they occupied the Property by virtue of a Private Residential Tenancy which could be terminated by them, at any time, by giving 28 days' notice and no further rental payments were due.
- 5.2 The first issue that the Tribunal required to determine was that of the nature of the tenancy agreement between the parties. It was not in dispute that the initial written tenancy contract, commencing on 1 July 2017, was a Short Assured Tenancy agreement, within the meaning of Section 32 of the Housing (Scotland) Act 1988 ("the 1988 Act"). The parties were signatory to two further written contracts and it is the latter of those, covering the period 1 July 2019 until 1 July 2020, that is most relevant, namely, did it represent an extension of the previous Short Assured Tenancy agreement or a new Private Residential Tenancy.
- 5.3 Since the 1 December 2017, being the date upon which the 2016 Act came into force, it has not been possible to create new Short Assured Tenancy agreements due to the introduction of Section 12(1A) of the 1988 Act. The introduction of the new Private Residential Tenancy regime is subject to Regulation 6 of The Private Housing (Tenancies) (Scotland) Act 2016 (Commencement No. 3, Amendment, Saving Provision and Revocation) Regulations 2017 ("the 2017 Regulations") which is in the following terms:-

### **6. Saving provision**

*Despite the amendments made by section 75 and paragraphs 1, 2 and 3 of schedule 5 of the 2016 Act, sections 12, 32 and 33 of the 1988 Act have effect on and after 1st December 2017 as they had effect immediately before that date but only in relation to—*

- (a) *a short assured tenancy (within the meaning given in section 32(1) of the 1988 Act) which was created before 1st December 2017 and continues in existence on that date;*
- (b) *a new contractual tenancy (within the meaning given in section 32(3)(b) of the 1988 Act) which came into being before 1st December 2017 and continues in existence on that date; and*

*(c) a new contractual tenancy (within the meaning given in section 32(3)(b) of the 1988 Act) which comes into being on or after 1st December 2017 at the ish of a short assured tenancy which is a short assured tenancy in a case mentioned in paragraph (a) or (b).*

5.4 The saving provision within Regulation 6 of the 2016 Act effectively sets out three scenarios in which Short Assured Tenancy agreements can survive post 1 December 2017. For the purposes of the present application, the relevant scenario is the third, contained within Regulation 6(c). It provides that a new contractual tenancy created after 1 December 2017 can be a Short Assured Tenancy, provided they meet the conditions contained within Section 32(3)(b) of the 1988 Act, as it stood prior to 1 December 2017:-

*(3) Subject to subsection (4) below, if, at the ish of a short assured tenancy—*

*(a) it continues by tacit relocation; or*

*(b) a new contractual tenancy of the same or substantially the same premises comes into being under which the landlord and the tenant are the same as at that ish,*

*the continued tenancy or, as the case may be, the new contractual tenancy shall be a short assured tenancy, whether or not it fulfils the conditions in paragraphs (a) and (b) of subsection (1) above.*

5.5 Thus, a new contractual tenancy created after 1 December 2017 can be a Short Assured Tenancy provided it commences at the ish of an existing Short Assured Tenancy, the premises remain the same or substantially the same and the landlord and tenant remain the same. In the present case, the new written tenancy contract commenced on 1 July 2019, at the ish of the previous contractual agreement. The premises, being the Property to which the agreements relate, remained the same however, crucially, it would appear to the Tribunal that there was a change in the identity of the tenant.

5.6 In the first minute of lease, “the Tenant” is defined as being the three occupiers of the Property, being Dawid Wilcynski, Maya Wilcynska and Dorota Slupczewska. In the written contract which then covers the period 30 June 2018 until 30 June 2019 (inclusive), the Tenant remains these three occupiers, however, the written contract which commenced on 1 July 2019 acknowledges that Dorota Slupczewska no longer resided at the property and states that Dawid Wilcynski and Maya Wilcynska, the Respondents, would be joint tenants. In the opinion of the Tribunal, this constituted a change in the identity of the tenant and the written tenancy contract commencing on 1 July 2019 cannot be a Short Assured Tenancy by virtue of Regulation 6(c) of the 2017 Regulations.

5.7 The next issue for the Tribunal to consider was whether sufficient notice had been given by the Respondents to terminate the Private Residential Tenancy. The Tribunal considered the emails that had been produced and lodged by the parties. It would appear there were efforts by the First

Respondent to bring the tenancy agreement to an end in September 2019. A request to terminate by consent appears to have been made by the Respondent however, it was indicated by the Applicant's letting agent that the Applicant wished the tenancy to continue until 1 July 2020, as indicated in the written contract. On 28 January 2020, the First Respondent emailed the Applicant's agent referring to another occupier being found "to take over the tenancy" by 1 March 2020. On 31 January 2020, the First Respondent again emailed the Applicant's agent, advising that his mother (the Second Respondent) had vacated the property in November 2019 and that he would be unable to make payment of the rent from March 2020 onwards.

- 5.8 The ability of a tenant to terminate a Private Residential Tenancy agreement is governed by Section 48(1) of the 2016 Act, which allows a tenant to give notice conforming with Section 49 of the 2016, which is in the following terms:-

*49 Requirements for notice to be given by tenant*

- (1) A notice fulfils the requirements referred to in [section 48\(1\)](#) if—
- (a) it is given—
    - (i) freely and without coercion of any kind,
    - (ii) after the tenant begins occupying the let property,
  - (b) it is in writing, and
  - (c) it states as the day on which the tenancy is to end a day that is after the last day of the minimum notice period.
- (2) A notice is to be regarded as fulfilling the requirements referred to in [section 48\(1\)](#), despite its not complying with the requirement described by subsection (1)(c), if the landlord agrees in writing to the tenancy ending on the day stated in the notice.
- (3) In subsection (1)(c), "the minimum notice period" means a period which—
- (a) begins on the day the notice is received by the landlord, and
  - (b) ends on the day falling—
    - (i) such number of days after it begins as the landlord and tenant have validly agreed between them, or
    - (ii) if there is no such valid agreement, 28 days after it begins.
- (4) An agreement as to the number of days after which a minimum notice period ends is invalid for the purpose of subsection (3)(b)(i) if the agreement—
- (a) is not in writing, or
  - (b) was entered into before the tenancy became a private residential tenancy.
- (5) In a case where two or more persons jointly are the landlord under the tenancy, references in this section to the landlord are to any one of those persons.

In the present case, the Tribunal is of the opinion that the emails from the First Respondent meets the requirements for notice set out in Section 49 of the 2016 Act. From their relationship, the fact that the Second

Respondent does not speak English and their evidence together with the material lodged the Tribunal is prepared to consider that the First Respondent was acting on behalf of his mother when communicating with the Applicant's agents. Furthermore, the emails clearly indicate the Respondents intention to have the tenancy end from the beginning of March 2020, an intention borne out by them having vacated the Property and handing back the keys, by the end of February 2020, the rent having been paid up to that date.

5.9 At first glance, the written contract beginning on the 1 July 2019 may suggest that two months' notice required to be given by the Respondents in order to terminate the tenancy. The Tribunal notes that the written contract was subscribed by the Respondents on 27 June 2019. Section 49(4) of the 2016 Act permits parties to a Private Residential Tenancy to agree a longer period of notice than the statutory default of 28 days, however, Section 49(4) only permits such an agreement after a tenancy becomes a Private Residential Tenancy. In order for an agreement to be valid within the meaning of Section 49, it must be made after the Private Residential Tenancy begins, which, in the present case, was 1 July 2019. It would appear to the Tribunal that any agreement to require the Respondents to provide two months' notice was made prior to the tenancy becoming a Private Residential Tenancy and, accordingly, is not valid.

5.10 The Tribunal therefore considers that sufficient notice was given by the Respondents, in writing, to terminate the tenancy as of 1 March 2020. The last issue which the Tribunal required to consider was whether the provision which sought to specify a duration of the tenancy (from 1 July 2019 until 1 July 2020) in the written contract had any legal effect. The Tribunal notes that the 2016 Act does not expressly prohibit the inclusion of a duration within a Private Residential Tenancy, however, Section 4(a) of the 2016 Act explicitly removes the requirement for an ish. The Tribunal also considered the terms of Section 44 of the 2016 Act which states:-

***44 No termination by parties except in accordance with this Part***

*A tenancy which is a private residential tenancy may not be brought to an end by the landlord, the tenant, nor by any agreement between them, except in accordance with this Part.*

This provision is imported into every Private Residential Tenancy contract, including that in the present case, and prevents parties from contracting out of it by virtue of Section 7 of the 2016 Act and Paragraph 9 of The Private Residential Tenancies (Statutory Terms) (Scotland) Regulations 2017. It would appear to the Tribunal that to insert another contractual provision into the contract which, in practice, would alter the ability of a tenant to terminate the tenancy would irreconcilably conflict with the provision included by virtue of the statute. In these circumstances, Tribunal considers that the term specifying a duration of the tenancy can not have any legal effect.

5.11 For these reasons, the Tribunal finds that rent was not due by the Respondents from 1 March as the Private Residential Tenancy had come to an end. The sum sought by the Applicant in respect of the cost of replacing the toaster was accepted as being due by the Respondents. The Tribunal has therefore made an order for payment restricted to the sum of £9.99.

### **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.**

Alastair Houston

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**Legal Member/Chair**

**12 March 2021**  
**Date**