



**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/21/1054

Re: Property at 18 South Parks Road, Glenrothes, KY6 1BJ (“the Property”)

Parties:

Mrs Angela Wallace, 35D Main Street, Springfield, KY15 5SQ (“the Applicant”)

**Ms Toni Watterson, 18 South Parks Road, Glenrothes, KY6 1BJ (“the
Respondent”)**

Tribunal Members:

Ms H Forbes (Legal Member) and Mrs M Lyden (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for payment should be granted against the
Respondent in favour of the Applicant in the sum of £2700**

Background

1. This is an application received on 5th May 2021 and made in terms of Rule 70 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended. The Applicant was seeking an order for payment in respect of unpaid rent originally in the sum of £1350, but increased to £1800 as of 1st June 2021, and £2700 as of 5th August 2021. The Applicant’s representative lodged a copy of a short assured tenancy agreement between the parties purportedly signed and commencing on 1st May 2017, Form AT5 dated 1st May 2017, rent ledger, correspondence between the parties, and notice to quit dated 29th March 2021.
2. The Respondent lodged written representations and productions by email dated 12th June 2021.

3. A Case Management Discussion (“CMD”) took place on 30th June 2021. The Respondent disputed that she entered into a tenancy agreement with the Applicant. She is the partner of the son of the Applicant. Any agreement regarding the Property was between them and did not involve her. She did not sign a tenancy agreement and provided examples of her signature to prove the signature on the tenancy agreement provided was not hers. Although she had made payments to the Applicant, she denied they were rent payments, describing them as payments to help the Applicant to pay the mortgage. The case was set down for a hearing. A Direction was issued.
4. Parties both made written representations and lodged productions in response to the Direction.

The Hearing

5. A hearing took place by telephone conference on 8th September 2021. Both parties were in attendance. The Applicant was represented by Ms Hazel Young.

The Applicant’s position

6. Ms Young set out the case for the Applicant. In response to the denial that there was a tenancy agreement, Ms Young referred to past payments of rent made by the Respondent, which were shown on bank statements lodged by the Applicant. Rental payments had now stopped. She also referred to various statements made by the Respondent in correspondence between the parties where she referred to her payments as ‘rent’, and referred to the Applicant as having to ‘rent out’ the property. According to Ms Young, this proved the Respondent knew she was paying rent. Furthermore, the Respondent had asked for notice to quit the Property, which, according to Ms Young, she would not have done if she did not consider there was a legitimate tenancy agreement between the parties. Ms Young referred to text messages from the Respondent’s partner to the Applicant where he stated ‘*You rented to both of us*’, ‘*You rent out to family*’ and ‘*Toni’s the only one on the tenancy*’, all of which statements supported the Applicant’s position. The Respondent had also asked by email dated 30th March 2021 for a copy of the AT5 document, yet she denied the document existed.
7. Ms Young submitted that the signature on the tenancy agreement purportedly signed on 1st May 2017 was in the same handwriting as the name on the Maternity Certificate lodged by the Respondent. Ms Young confirmed that she was not involved as agent for the Applicant in 2017.
8. Ms Young referred the Tribunal to an email dated 30th August 2021 which enclosed an email from Universal Credit to Ms Young dated 23rd August 2021. Ms Young had applied on behalf of the Applicant to Universal Credit for direct rent payments and this had been approved. Ms Young also included information from the Universal Credit website that stated that, in order to apply for help towards rent, a claimant would have to show the tenancy agreement,

a rent book, or a letter from their landlord. It was her position that the Respondent must have shown a copy of the tenancy agreement to Universal Credit in order to get help with paying the rent. This contradicted the Respondent's position that she had no tenancy agreement.

The Applicant's evidence

9. The Applicant gave evidence. She said she had registered as a landlord around 15 years ago, and had listed the Property with Fife Council when she bought it in 2017. She has been a landlord for some years and is aware of the correct procedures. She has always done everything correctly as a landlord.
10. The Applicant said she wanted to put the tenancy agreement in the Respondent's name to give her and her child some protection, in case her partner, who is the Applicant's son, said he had more right to the Property as it belonged to his mother. The rent was reduced because the Property was in a poor state and her son was going to do some work on the Property, as he had done before. The intention was to do up the Property and sell it on. After selling a few properties and making a profit, the Applicant intended to gift a sum of money to the Respondent and her partner to use for a deposit to buy their own property. Her son had done work before. He was not a tradesman but was quite good at carrying out work. He was in stable employment at the time of moving into the Property.
11. The Applicant said there were discussions with the Respondent in advance of the tenancy agreement being signed. The Applicant's son was aware that the tenancy would be in the Respondent's name. It was to be a six month short assured tenancy agreement. It was expected it would take 6 months for the work to be carried out. The tenancy would then continue on a month to month basis. The Applicant used a standard lease document for all her properties. A Form AT5 was given to the Respondent prior to signing the tenancy. This took place at the Applicant's home on 1st May 2017. The Applicant's son was present, as was her husband. The Respondent signed the tenancy agreement. The Applicant kept a copy and gave a copy to the Respondent.
12. The work was not carried out within 6 months due to tragic family circumstances. Responding to questions from the Tribunal, the Applicant said the Respondent and her partner moved in to the Property at the same time. Asked why they were not joint tenants, the Applicant said the priority was to secure the tenancy for the Respondent and her grandson.

Mr Alan Wallace

13. Mr Alan Wallace is a regional accounts manager and the husband of the Applicant. He said he did not take much to do with his wife's letting arrangements, but he was present on 1st May 2017, when the Respondent and her partner came to his home. He remembered the Applicant giving the tenancy agreement to the Respondent to sign, and asking him to witness the signatures. He described the Applicant as very particular in these matters.

The Respondent was very thankful for the opportunity to rent the Property. She and her partner had previously been staying in a place that was in poor condition. Mr Wallace said he saw the Respondent sign the tenancy agreement. She was a nervous person and said she did not know where to sign.

14. Asked by the Tribunal whether he had forged the Respondent's signature on the tenancy agreement, as suggested in written representations made on behalf of the Respondent, he said he 'wouldn't go near anything like that'. He would not sign in block capitals, as the Respondent had done. He was unfamiliar with the Respondent's usual signature.
15. Asked for the background to the situation, Mr Wallace said the Respondent's partner's previous relationship had ended acrimoniously, with a child involved, and he and the Applicant had discussed matters and were keen to ensure that the Respondent was looked after. Putting the tenancy in her name was a way to mitigate their fears, as she was expecting a child.
16. The Property required decorating and tidying up. Mr Wallace did not recall discussing the rent prior to the commencement of the tenancy. He was aware the rent was quite a bit less than could have been charged to a non-family member. It was an amount everyone was happy with.
17. Under cross-examination by the Respondent, Mr Wallace confirmed he had he had not been in his current position for eight months, as stated at the start of giving evidence. It was actually six months. Despite saying he had been in his previous post for eight years, he had two different jobs and a period of unemployment during that time. Mr Wallace agreed that the Respondent was not pregnant at the time of entering into the tenancy agreement, saying that there had been talk of more children at that time.
18. Asked whether she wished to make any challenge to Mr Wallace's evidence concerning her signing of the tenancy agreement, the Respondent said no, as it never happened.

The Respondent's position

19. The Respondent said she had never signed a tenancy agreement. The signature on the document was not hers. She would not print her name when signing a document. She was not given an AT5. She did not know what this was until they took advice from Shelter Scotland.
20. She had been living with the son of the Applicant, Michael Wallace, for ten years. He was the tenant of their previous address. When they left their previous address, she intended to move back to Dunfermline to be closer to family. Any arrangement to live in the current property was made verbally between the Applicant and Michael Wallace. She had no say in the matter and did not view the Property before she was given the keys at the time of moving in.

21. There was a breakdown in the relationship between the Applicant and Michael Wallace in November 2020. Thereafter, Rockford Properties were appointed to manage the Property. Rockford Properties keep saying she is the tenant and that she owes rent. They refuse to discuss the situation with Michael Wallace. The Respondent said she has tried to complain to Rockford Properties with no success.
22. The Respondent said she could not have afforded to take on the tenancy on her own as she worked part time. It was not conceivable that an experienced landlord like the Applicant would have her as the sole tenant in those circumstances. The first time she saw the tenancy agreement was when the application and papers arrived from the Housing and Property Chamber in May 2021. It was her position that, if Michael Wallace had been present on the day of signing, his signature would also be on the agreement.
23. It was her understanding that they were making payments towards the Applicant's mortgage, rather than rental payments. Any profit after selling the Property would be given to her and Mr Wallace to use as a deposit for buying a property.
24. Asked by the Tribunal why she had described payment made to the Applicant by bank transfer as 'Rent', the Respondent said the Applicant had asked her to do that to distinguish these payments from other payments, such as repayments of money borrowed. She got paid monthly, whereas Michael was paid weekly, so it often made more sense for her to make the monthly payment. When Michael went back to monthly pay, he made the payments. Although she had used the term 'rent' in messages, she had never agreed to be a tenant. She knows nothing about tenancies and had never dealt with anything like this. She believed Michael Wallace was a tenant as a result of a verbal agreement between him and the Applicant.
25. Asked by the Tribunal why she had asked for notice to quit, if she was not a tenant, the Respondent said it was Michael that asked. She did not want to be involved and did not understand. She thought they needed the notice to get out of the Property and get social housing. She just went along with everything as she wanted out of the house. She had tried to speak to the Applicant and was ignored.
26. Responding to questions regarding Universal Credit, the Respondent said she took nothing to do with applying for this or the housing cost element, stating that Mr Wallace did all this, and she just looked after the kids. She did not believe she and Michael Wallace had ever been asked to submit a copy of their tenancy agreement. She had seen in her Universal Credit journal that the Applicant was asking for payment to be made directly to her, and the Respondent had agreed to do that, but she had since tried to withdraw her consent. She presumed the Applicant had sent a copy of the tenancy agreement to Universal Credit.

27. Under cross-examination by Ms Young, the Respondent said they had stopped paying the Applicant due to disrepair in the Property. Work was not being carried out. The Applicant had promised to get quotes and had not done so. Michael had kept the Applicant updated with required works, and, if it was a legal tenancy, the work should have been carried out. She was unwilling to agree to Ms Young's previous requests to visit the Property to inspect the repairs as it was not necessary. There was a verbal agreement between Michael and the Applicant and they would not deal with Rockford Properties. She did not want to have anything to do with the situation as she had not signed the tenancy agreement. Asked why the Applicant would have safety certificates in place if it was not a regular tenancy, the Respondent said that was up to the Applicant. It was her house. The Respondent said the Legionella certificate was not correct as there was no visit to the Property by the Applicant in October 2020, as stated in the certificate.

Mr Michael Wallace

28. Mr Michael Wallace is a chemical technician. He described a troubled relationship with his mother going back to childhood. He had been renting a property prior to moving into the Property. He and the Respondent were living together and the Respondent was considering moving to Dunfermline as she was reliant on family support. The Applicant had looked at other properties to purchase. This was all kept from the Respondent. The Applicant purchased the Property and went for lunch with the Respondent, and handed over the keys. The house was in a state of disrepair.

29. There was no discussion about a formal tenancy agreement. There was discussion between himself and the Applicant about 'flipping' properties, and, as he was handy when it came to carrying out work, he was happy with the arrangement, which was expected to last for a period of 12 months. He believed the period of 12 months was necessary to avoid stamp duty or other taxes that would be due if it was sold earlier. Any payments made to the Applicant were referenced as 'rent' at the Applicant's request to distinguish them from other payments made to the Applicant. The intention was to do up the Property and sell it, after which the Applicant would gift money for a deposit to Mr Wallace. He had paid the majority of monthly payments to the Applicant since January 2019. Sometimes rent was not due as there was an agreement the money could be put towards repairs, such as kitchen flooring. He had carried out a lot of work to the Property. The Applicant had refused to carry out further works, saying she could not afford it, then spending the money on other items.

30. Mr Wallace made derogatory statements about the character and business dealings of the Applicant. He said her case was a complete fabrication. In anger, she had gone after the Respondent rather than him. Asked why this might be the case, Mr Wallace said it may be because a fraud had been committed elsewhere and the Applicant had used the Respondent's name elsewhere. He said the Applicant did not do things to help anyone and she was only out for herself.

31. Asked by the Tribunal what he considered his occupancy status to be, Mr Wallace said he now thought he was a tenant, but until January 2021, he had just considered himself as living in his mother's house. The Respondent is not a tenant. There was nothing official, and no discussion about a proper tenancy agreement, until the last eight months, when the Applicant began to claim the Respondent was the sole tenant.
32. Responding to questions from the Tribunal as to why they had requested notice to quit if they were not tenants, Mr Wallace said it was required by the local authority to prove they were homeless. They have decided against going down the homeless route now. He described the works he had carried out to the Property, and said it is still not in a good state of repair, with water ingress through cracked external rendering.
33. Mr Wallace said he had considerable evidence to lodge if an application was raised against him. He was withholding payment to the Applicant now due to the state of the Property.
34. Under cross-examination by Ms Young, Mr Wallace said he had originally allowed access for repairs but was not prepared to allow Rockford Properties to have access to assess repairs, as they will not communicate with him. Asked why they did not just leave the Property if it was not a legitimate tenancy, Mr Wallace said they had been planning to do up the Property but things had fallen through. Responding to questions from the Tribunal, Mr Wallace said they were having difficulty finding somewhere else to live at the moment.

Summing up for the Applicant

35. Ms Young submitted that, although Michael Wallace had tried to discredit the Applicant's character, it was notable that he was happy to move into her property, and accept loans and presents from her. The fact that the relationship has broken down indicates why the tenancy agreement was put in the Respondent's name. The Applicant has enlisted Ms Young as a professional to deal with matters but the Respondent will not engage with her, and the Applicant cannot force matters.
36. The Applicant had done everything correctly as landlord. Ms Young was confused as to why the Respondent and Mr Wallace had asked for notice to quit if they did not believe they were tenants. They could have just left the Property. She submitted that they would have needed evidence to show Universal Credit that they had a proper tenancy agreement. Her agency had never supplied any such evidence to Universal Credit.
37. Responding to questions from the Tribunal, Ms Young agreed that she could not say if the tenancy agreement was valid, but she would not have taken on the management of the Property if she thought it was not. The Applicant has registered as a landlord, and had subsequently listed the Property with

landlord registration. It was unlikely she would do this if there was no tenancy agreement.

Summing up by the Respondent

38. The Respondent reiterated her evidence that she had never signed a tenancy agreement and would not have done so in her circumstances. Until recently, she knew nothing about the Applicant's landlord registration or certification.
39. The Respondent was not aware of any reason the Applicant would target her. They had previously got on well. The only thing she could think of to explain the Applicant behaving this way was that contact between the Applicant and her grandchildren had been stopped.

Findings in Fact and Law

- 40.
- (i) The Applicant is the heritable proprietor of the Property.
 - (ii) The Property is let to the Respondent in terms of a short assured tenancy between the parties that commenced on 1st May 2017 at a monthly rental of £450.
 - (iii) Rent lawfully due in terms of the tenancy has not been paid.
 - (iv) The Applicant is entitled to recover rent lawfully due.

Reasons for Decision

41. The Tribunal found it proved on the balance of probabilities that there is a short assured tenancy agreement between the parties, that the Respondent undertook to make rental payments to the Applicant, and that she failed to do so.
42. There was a short assured tenancy agreement before the Tribunal purporting to have been signed by the parties, and witnessed by Mr Alan Wallace, on 1st May 2017, and a Form AT5 of the same date. The Tribunal found the Applicant and her witness to be credible and reliable in their evidence that signing of the document took place at their home on the relevant date, and that the Form AT5 had been provided to the Respondent before the tenancy agreement was signed. The Tribunal preferred the evidence of the Applicant and her witness in this regard.
43. The Tribunal considered the Respondent's evidence showing her style of writing in block capitals on a maternity certificate, however, even the two samples of block capitals written thereon appeared to be different from each

other. It may well be unusual for the Respondent to sign a formal document in block capitals; however, it was impossible to form a conclusion from the evidence that the block capitals on the tenancy agreement were not written by the Respondent.

44. There was evidence before the Tribunal that the Applicant is an experienced landlord who tends to be particular about her letting business. She has registered as a landlord and ensured that the Property was listed on her landlord registration. She has carried out relevant safety checks and ensured certification is in place, as required of a landlord, all of which tended to support the Applicant's evidence that the arrangement was to be a proper one. There was no substantive evidence before the Tribunal to substantiate the claims made by the Respondent's witness in respect of the Applicant's character or business dealings.
45. In addition to the tenancy agreement, there was a significant body of evidence to show that the Respondent made monthly payments to the Applicant, at least up to early 2019, on or around the same date each month by bank transfer. The Respondent had designated the payments using the reference 'Rent' when setting them up with her bank. The Respondent also referred to 'rent' in messages to the Applicant. This evidence tended to show that the Respondent considered herself to be a tenant.
46. The Tribunal took into account an undated message from the Respondent's witness to the Applicant that stated '*You rented it to both of us, her name for the legal reasons u said*'. This tended to show that there had been some discussion at some stage that the tenant was to be the Respondent.
47. The Tribunal considered the evidence lodged on behalf of the Applicant that an award of Universal Credit incorporating support for housing costs could only be made if a tenancy agreement, a rent book, or a letter from the landlord was provided. The Respondent and her partner are in receipt of such support, and the Tribunal felt that this tended to support the Applicant's claim that there is a formal tenancy agreement in place.
48. Rental payments in the sum of £2700 are outstanding and lawfully due. Although the Tribunal raised a point regarding the last increase in the sum sought during the hearing, stating that the rental schedule showed a sum of £2450, on further examination, it was clear that the rental schedule showed the correct sum outstanding as £2700. The Tribunal, therefore, allowed the sum claimed to be amended to £2700.

Decision

49. An order for payment in the sum of £2700 is granted against the Respondent and in favour of the Applicant.

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.

Helen Forbes

Legal Member: Helen Forbes

13th September 2021
Date