

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2018.

Chamber Ref: FTS/HPC/CV/21/3092

Re: Property at 30 Shaw Street, Dunfermline, Fife, KY11 4AX (“the Property”)

Parties:

Mrs Julie Duncan, 10 Dalcross Way, Dunfermline, Fife, KY12 7RT (“the Applicant”)

Mr Peter Smith, 20 Elizabeth Street, Dunfermline, Fife, KY11 4AY (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member) and Elaine Munroe (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) dismissed the application.

Present

The Applicant was in attendance. She terminated her involvement before completing her oral evidence. The applicant’s husband was in attendance on the teleconference.

The Respondent was not in attendance initially. At on or around 10.18am he joined the teleconference after some IT difficulties and clerk requiring to telephone him.

Preliminary Matters.

The Tribunal raised with the Applicant the position since the last hearing and her contact with the Respondent. The Applicant said in regards her separate application for an Eviction Order she no longer sought same. She said the Respondent since the last Hearing returned the keys of the property to her. However she explained that there had been damage to the property on her entry and money was needed to get the property back to standard. She had been in contact with the police in regards the damage for insurance purposes. She referred to photographs which the Tribunal

confirmed were not lodged. The Tribunal confirmed the application before it concerned non-payment of rent.

The Respondent joined the call and the Legal Member narrated the evidence heard initially from the Applicant. He said the locks and he would not have been able to access the property. He was unaware of condition issues with the flat.

The Legal Member discussed the order of proceedings and no other preliminary matters were raised.

The Hearing

a) The evidence began with the Applicant,

1. The Applicant said that the Respondent, her brother, had separated from his ex-girlfriend and had nowhere else to go. She said he stayed in her house with her family for around 9 months.
2. The Applicant told the Tribunal that she has owned the property concerned for on or around 9 or 10 years. The Respondent told the Tribunal that her mother died 7 years ago and her father 6 years ago. Her father was diagnosed with cancer 4 months after the death of her mother and he lived with the Applicant for 15 months before he passed. The property had belonged to her parents but she bought it from then and did not pay a deposit. Prior to the Respondent living in the property she had a tenant in it for 3 or 4 years under a short assured tenancy.
3. The Applicant said after 9 months of trying to get somewhere for the Respondent to stay she asked her previous tenant to leave the property. She gave him 2 months notice. The Respondent got a job and the Applicant tried everything to keep him in the job. The Respondent was cycling to work and the Applicant and her husband were picking the Respondent up from work.
4. The Respondent said she did everything to accommodate the Respondent and had bought him a couch bed to live with her family. She said she could not recall when he signed the lease she thought it could have been October 2018 or October 2019. She was reminded by her husband it was October 2018.
5. The Applicant told the Tribunal that the rent was £500 a month. The previous tenant paid £550 a month. She used the money to supplement income as she had 4 young kids to be cared for at home. She is a staff nurse and now as all her kids are at school she can work.
6. The Applicant said that the Respondent paid rent by bank transfer. However he paid sometimes to her own account, sometimes to her husband's account and at other times to the rental account. She did not have a copy of the signed rental agreement. The Respondent had the principal tenancy agreement to see if he could get benefit or help but that didn't happen. The Applicant was asked about the rent statement she had lodged at the Tribunal's request at the

time of sifting. The Applicant said the Respondent often borrowed money it was noted there when he paid it back or borrowed it.

b) The Applicant terminated her evidence and involvement.

1. The Applicant was reluctant to answer the Tribunal's questions on the rent statement lodged. She told the Tribunal she did not have it in front of her. The Tribunal asked for clarification on the amounts provided in the statement which were noted as "borrowed". The Applicant was unclear as whether this was money she had given to the Respondent or money he had returned to her. Generally the Applicant was not willing to be questioned on the rent statement and could not provide the necessary evidence to establish the amounts she alleged were due. The Tribunal attempted to assist the Applicant in presenting this evidence but the Applicant was reluctant.
2. The Applicant terminated her involvement in the teleconference. Before terminating her call she told the Tribunal "I am bored of this. I get the feeling you will side with him as there is no lease signed. I have had enough, you have made up your mind, you are going to side with him and I am bored". The Applicant terminated the call.
3. The Tribunal told the Respondent that the Hearing was adjourned until the matter of the Applicant's position could be clarified.
4. The Tribunal clerk made a number of efforts to call the Applicant. She accepted one of the calls. She said that she would no longer participate in the Tribunal anymore and would not withdraw the application. She said the stress was making her husband ill and it was not worth it.

Reasons for the Decision

The Tribunal heard part evidence from the Applicant before she terminated her involvement. This evidence was insufficient to establish a sufficient factual basis that the Tribunal could rely on in her absence. The Tribunal was being asked to determine the existence of a lease based on the oral and written evidence of the parties, which in the Applicant's case was incomplete. The Applicant's termination before concluding her oral evidence did not allow for the Respondent to cross examine her evidence and the Tribunal had a number of other matters they sought to be addressed which could not be addressed without hearing further from the Applicant orally. Overall the Applicant was unclear as to whether the amounts in the rent statement referred to as borrowing were personal loans to the Respondent and what effect that had on the rent statement lodged. '

The Applicant had been unable to provide the Tribunal with the start date of the tenancy until prompted by her husband and was generally unwilling to cooperate with the Tribunal. She remained reluctant to do so generally and then terminated the call. Before doing so she made clear her views. The Tribunal considered in terms of Rule 27 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure)

Regulations 2017 that the Tribunal due to the extent of the Applicant's failure to co-operate with the Tribunal that they could not deal with the proceedings justly and fairly and accordingly they dismissed the application.

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.

K Kirk

29th July 2022

Legal Member/Chair

Date