



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

Chamber Ref: FTS/HPC/CV/22/0361

Re: Property at 167 Lanark Road West, Currie, Edinburgh, EH14 5NZ (“the Property”)

Parties:

Miss Destiny Ogbeni, 19 Father Finn Park, Louth Village, Dundalk, County Louth (“the Applicant”)

Mr John MacLennan, Mrs Reta MacLennan, 167 Lanark Road West, Currie, Edinburgh, EH14 5NZ (“the Respondents”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mrs E Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be dismissed as the Tribunal does not have jurisdiction in relation to the proceedings.

Background

1. By application dated 5th February 2022 and made under Rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Rules”), the Applicant applied for an order for payment in the sum of £923 in respect of an unreturned tenancy deposit (£650) and overpaid rent (£273) pertaining to a tenancy agreement between the parties that commenced on 27th September and ended on 18th December 2021. The Applicant lodged an invoice relating to faulty appliances, and print-outs of text messages between the parties.
2. By letter dated 24th March 2022, the Respondents made written representations and lodged productions including final invoice, copy emails and text message printouts, and a copy of the accommodation contract. It was the Respondents’ position that the Property was let under the Room to Rent scheme, and the Applicant was a lodger. The deposit was not returned due to damage to the Property, and the Applicant was asked to leave on 18th December 2021.

3. A Case Management Discussion (“CMD”) took place by telephone conference on 29th April 2022. The case was continued to a hearing with a conjoined case, FTS/HPC/PR/22/0358, only on the preliminary point of whether the tenancy is a Private Residential Tenancy and whether the Tribunal has jurisdiction.
4. By letter dated 13th June 2022, the Respondents lodged written representations and productions, including plans of the larger subjects, photographs and Government guidance.
5. A hearing took place in the conjoined case, FTS/HPC/PR/22/0358, by telephone conference on 4th July 2022. All parties were in attendance. The Applicant was represented by Mrs Juliet Ogbeni, who also gave evidence.
6. The Tribunal heard in the conjoined case that it was agreed that, to access the Property, which was a self-contained bedsit, the Applicant used an ordinary means of access through the Respondents’ dwelling.
7. The Private Housing (Tenancies) Scotland Act 2016 (“the 2016 Act) provides at paragraph 7 of Schedule 1 that a tenancy cannot be a private residential tenancy if paragraph 8 or 9 apply to the tenancy. The Tribunal found that paragraph 9 applies to the tenancy, as follows:
 9. (1) *This paragraph applies to a tenancy if sub-paragraphs (2) and (3) apply to it.*
 - (2) *This sub-paragraph applies to a tenancy if, from the time it was granted, a dwelling within the same building as the let property has been occupied as the only or principal home of a person who, at the time of occupying it, has the interest of the landlord under the tenancy.*
 - (3) *This sub-paragraph applies to a tenancy if, at the time it was granted, there was an ordinary means of access —*
 - (a) *through the let property to the dwelling occupied by the person who is, or is to be, the landlord, or*
 - (b) *through the dwelling occupied by the person who is, or is to be, the landlord to the let property (whether or not that access was available to the tenant as of right).*
8. The Tribunal found the tenancy between the parties to be a common law tenancy.
9. In the circumstances, the Tribunal does not have jurisdiction to consider the case, therefore, the case is dismissed.

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/Chair

4th July 2022
Date