



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 (“the Act”) and Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/CV/22/0697

The Parties:

Mr. Ian Duff residing at 23, Fir Park, Tillicoultry, FK13 6PX (“the Applicant”) per his agent, Mr. Calvin Gordon, Solicitor, McEwan Fraser Legal, Claremont House, 130 East Claremont Street, Edinburgh, EH7 4LB (“the Applicant’s Agent”)

Mr. Aaron Cummings, last known address care of Legal Services Agency, 134, Renfrew Street, Glasgow G3 6ST and present whereabouts unknown (“the Respondent”)

Tribunal Members:

Karen Moore (Legal 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 tenancy agreement between the Parties be granted to the effect that the tenancy agreement between the Parties is void *ab initio*.

Background

1. By application received on 28 July 2021 (“the Application”), the Applicant’s then agent, Mr. Michael Duff, applied to the tribunal for an Order for reduction of a tenancy agreement between the Parties and that in terms of Rule 111 of the Rules. The Application set out that a tenancy began on or around 20 October 2020 and ended on or around 6 May 2021. The Application explained that no written tenancy was entered into but that rent of £1,300.00 and tenancy deposit of £1,300.00 had been paid to the Applicant by the Respondent. Accordingly, a private residential tenancy (“the PRT”) had been created by virtue of Section 3 of the Act.
2. The Application stated that the Applicant had been induced to enter into the PRT by fraudulent misrepresentations made to him by the Respondent and provided documentary evidence of false references for the Respondent. Mr. Duff subsequently submitted detailed submissions and a list of legal authorities in support of the

Application and submitted documentary evidence in respect of the Respondent's personal conduct and in respect of his breaches of other tenancy agreements.

3. The Application was accepted by the Tribunal Chamber and allocated to the Tribunal.
4. The Tribunal was aware from other proceedings between the Parties which were before the Tribunal that the Respondent had instructed Mr. Christman of Legal Services Agency, 134, Renfrew Street, Glasgow G3 6ST to act on his behalf, the other proceedings being an application by the Respondent against the Applicant for compensation in terms of The Tenancy Deposit Schemes (Scotland) Regulations 2011. Mr. Christman had indicated to the Tribunal that he was to be instructed in these and another set of proceedings, but had then withdrawn from acting in all of the proceedings. Therefore, the Tribunal issued a Direction as follows:-
 - "1. The Applicant is directed to disclose his address to the Tribunal and the Respondent and the Respondent's Representative, failing which he is directed to submit a list of legal authorities in support of his position that he should not be required to disclose his address in the present proceedings. The said documentation should be lodged with the Tribunal and copied to the other Party no later than close of business on the day which falls fourteen days before the date of the case management discussions to be fixed and intimated to the Parties; and*
 - 2. The administration of the First-tier Tribunal for Scotland Housing and Property Chamber is directed to:*
 - (i) to fix a case management discussion in terms of Rule 17 of the Rules for the present proceedings;*
 - (ii) to fix case management discussions in terms of Rule 17 of the Rules for the cases referenced FTS/HPC/CV/21/3151 and FTS/HPC/CV/22/0697 on the same date and at the same time as the case management discussion fixed for these proceedings and*
 - (iii) to intimate the date of the case management discussions on the Applicant both at his last known care of address and by advertisement on the Chamber's website and on the Respondent and the Respondent's Representative at their address at 23, Fir Park, Tillicoultry, FK13 6PX".*
5. A Case Management Discussion ("CMD") was fixed for 29 July 2022 at 10.00 by telephone conference and was intimated to the Respondent at his last known care of address and by advertisement on the Chamber's website.

Case Management Discussion

6. The CMD took place on 29 July 2022 at 10.00 by telephone conference. Neither the Applicant nor the Respondent took part. The Applicant was represented by Mr. Gordon. The Respondent was not represented and had not submitted written representations. The Tribunal, being satisfied that the Respondent is aware of the proceedings and that the CMD had been intimated to the Respondent, proceeded with the CMD in his absence.
7. On behalf of the Applicant, Mr. Gordon moved that the Order be granted as set out in the Application and the accompanying documents. Mr. Gordon advised that if the

Order is granted the Applicant is aware that the sums paid to him by the Respondent in rent and as a tenancy deposit fall to be repaid by virtue of the principle of *restitutio in integrum*.

Findings in Fact

8. The Tribunal had regard to the Application and the detailed submissions and documentary evidence, which were submitted subsequently, none of which was challenged by or on behalf of the Respondent, and to the CMD. The Tribunal made the following findings in fact on the balance of probabilities: -

- i) There had been a PRT of the Property between the Parties which began on or around 20 October 2020 and ended on or around 6 May 2021 on 12 December 2015;
- ii) No written tenancy agreement was entered into and the PRT was constituted by operation of Sections 1 and 3 of the Act;
- iii) Rent of £1,300.00 and a tenancy deposit of £1,300.00 was paid to the Applicant by the Respondent via a company in which the Respondent has a proprietorial interest;
- iv) No further sums were paid to the Applicant by the Respondent;
- v) Prior to entering into the PRT, the Respondent provided the Applicant with a favourable personal reference in respect of his conduct as a tenant;
- vi) The personal reference induced the Applicant to enter into the PRT with the Respondent;
- vii) Investigations made by or on behalf of the Applicant after the tenancy commenced proved the personal reference to be false;
- viii) Further investigations made by or on behalf of the Applicant after the tenancy commenced showed the Respondent to have entered into and defaulted on rent payments in two other properties, with Tribunal Orders for rent and eviction being made against the Respondent;
- ix) The extent of the rent arrears owed by the Respondent to previous landlords is substantial, being in excess of £30,000.00;
- x) The Respondent was aware that he had provided the Applicant with a false favourable reference;
- xi) The Respondent was aware that he did not disclose the true nature of his renting history to the Applicant;
- xii) Had the Applicant been aware of the true nature of the Respondent's renting history he would not have entered into the PRT;
- xiii) The Respondent knew that if he had made the Applicant aware of the true nature of the Respondent's renting history, the Applicant would not have entered into the PRT;
- xiv) The Respondent induced the Applicant to enter into the PRT by fraudulent means;
- xv) The Respondent sought to benefit further from the fraud by making an application against the Applicant for compensation in terms of The Tenancy Deposit Schemes (Scotland) Regulations 2011;
- xvi) On becoming aware of the true nature of the Respondent's renting history and that the favourable personal reference was false, the Applicant took steps to reduce the PRT contract;

- xvii) The PRT is a contract capable of being reduced;
- xviii) The Applicant is the owner of the Property and
- xix) The Applicant has funds available to repay the rent and deposit to the Respondent.

Decision and Reasons for Decision

9. The Tribunal had regard to Section 71 of the Act which states *"In relation to civil proceedings arising from a private residential tenancy (a)the First-tier Tribunal has whatever competence and jurisdiction a sheriff would have but for paragraph (b) and (b)a sheriff does not have competence or jurisdiction."* A sheriff has competence and jurisdiction to reduce a contract and has power to reduce tenancy agreements. The Application is civil proceedings which arise from a private residential tenancy, the PRT being a valid and enforceable contract by operation of Sections 1 and 3 of the Act until the Tribunal determines to reduce it. Accordingly, the Tribunal has jurisdiction.
10. The Tribunal had regard to the particular facts of the case and having found that the Applicant had been induced by the Respondent to enter into the PRT by fraudulent means, the Tribunal was satisfied that it could reduce the PRT contract.
11. The Tribunal then had regard to whether it should reduce the PRT to a voidable or a void status. The Tribunal had regard to the particular facts of the case in respect of restoring the Parties to their respective positions before the PRT began in October 2020 and, having found that the Applicant has funds available to repay the rent and deposit to the Respondent and having found that the Applicant remains the owner of the Property, took the view that the Parties can be restored to their respective positions. Accordingly, the Tribunal determined that it was appropriate to reduce the PRT to render it void from the outset.
12. Having made those determinations, the Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal "may do anything at a case management discussionincluding making a decision" and so proceeded to make an order to reduce the PRT as void *ab initio*.

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.

Karen Moore

Legal Member/Chair

29 July 2022
Date