



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) Act 2016 and Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/CV/20/1344

Re: Property at Flat 0/2 46 Nithsdale Street, Glasgow, G41 2PY (“the Property”)

Parties:

Mr. Tristan Wilson, residing at 29, Sparry Lane, Carharrack, Redruth, Cornwall, TR16 5SJ (“the Applicant”)

Ms. Shaheen Ullah, residing at Flat 0/2, 46, Nithsdale Street, Glasgow, G41 2PY (“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”) dismissed the Application.

Background

1. By application received on 15 June 2020 (“the Application”), the Applicant made an application to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Chamber”) for a determination and a payment order in terms of Section 71 of the Act and Rule 111 of the Rules. The Application comprised an application form, copy tenancy agreement commencing on 6 March 2020, evidence of payment of a deposit of £400.00 by him on 19 February 2020 and evidence of payment of rent of £400.00.

2. On 5 May 2020, a legal member of the Chamber with delegated powers of the Chamber President the Application and a Case Management Discussion (“CMD”) was fixed for 18 August 2020 at 10.00 by telephone conference call. The Application was intimated to the Respondent by service on the Chamber website. The CMD was intimated to both Parties.
3. The CMD took place on 18 August 2020 at 10.00. The Applicant took part. The Respondent was not present and so did not take part. The Tribunal explained the role of the Tribunal and its powers within the Scottish Courts Administration, its role in respect of residential tenancies in Scotland.
4. The CMD was heard in conjunction with CMD for another application by the Applicant against the Respondent, being application number FTS/HPC/PR/20/1096 under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Other Application”) and in respect of which the Tribunal found it had no jurisdiction as the tenancy was not a relevant tenancy under those Regulations.

Summary of Discussion

5. The Tribunal advised the Applicant that it had read and was familiar with all of the background papers in respect of the Application.
6. The Tribunal noted from the CMD in respect of the Other Application that the Applicant had obtained the tenancy via an online letting agency and that the Respondent resided at the Property, occupying the upstairs room. The Tribunal noted from the CMD in respect of the other Application stated that the Applicant did not know for certain that this was the Respondent’s main residence, but, again, on questioning by the Tribunal, stated that the Respondent resided in the Property.
7. The Tribunal advised the Respondent that accommodation shared with a landlord affected the status of a tenancy arrangement and the Tribunal’s jurisdiction in respect of the Application. The Tribunal advised the Respondent that it appeared to the Tribunal, from the paperwork forming Application and the CMD for the Other Application, that the Applicant was a lodger in the Respondent’s home and not a tenant with exclusive rights.

Findings of the Tribunal.

8. From the Application and the CMD, the Tribunal found the following facts to be established on the balance of probabilities: -
- i) There was a rental arrangement between the Parties beginning on 6 March 2020 for a room and shared premises at the Property;
 - ii) The Respondent resided in or occupied part of the Property;
 - iii) The Property let was not let for the exclusive use of the Applicant but was let on a shared basis with the Respondent as her main or only residence.

Decision of the Tribunal and Reasons for the Decision.

9. The Tribunal's jurisdiction is founded under Section 71 of the Act which states that the Tribunal has jurisdiction "*arising from a private residential tenancy*".
10. Section 1 of the Act states that "*A tenancy is a private residential tenancy where (a) the tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling, (b) the tenant occupies the property (or any part of it) as the tenant's only or principal home, and (c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.*"
11. Schedule 1 to the Act at paragraph states that a tenancy is not a private residential tenancy inter alia tenancy if "*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.*"
12. In the case, the Property falls within the exclusion set out in Schedule 1 to the Act. Further, the tenancy arrangement does not fall within the definition set out at Section 1(a) of the Act. Therefore, the Tribunal does not have jurisdiction in terms of Section 71 of the Act.
13. Accordingly, as the Tribunal has no jurisdiction, the Tribunal dismissed the Application.
14. The Tribunal advised the Applicant that the court with jurisdiction is the summary civil court, the Sheriff Court in Glasgow and he might consider raising a small claim under the Simple Procedure rules.

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.



Legal Member/Chair

18th August
Date