



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 30 of the Housing (Scotland)  
Act 1988**

**Chamber Ref: FTS/HPC/PR/19/1251**

**Re: Property at 2/2 1612 Dumbarton Road, Glasgow, G14 9DB (“the Property”)**

**Parties:**

**Mr Agbaraoluwa Oladiran, Plot 448 Close 17 Mayfair, Garden Estate Lekki,  
Lagos, Nigeria (“the Applicant”)**

**Miss Iwona Grazyna Majzuk-Soska, 2/2 1612 Dumbarton Road, Glasgow, G14  
9DB (“the Respondent”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that**

**Background**

This is an application for an order drawing up a document which fairly reflects the existing terms of an assured tenancy dated 18<sup>th</sup> April 2019 and brought in terms of Rule 68 (Application to provide written tenancy agreement and weekly rent book) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant sought in his application an order from the Tribunal drawing up the terms of a tenancy agreement which he alleges he entered into with the Respondent in respect of the rent of a room together with other shared facilities in the Property, and provided with his application copies of his bank statements apparently showing rental payments made by him to the Respondent, and various text messages between the parties.

A Case Management Discussion was held on 21<sup>st</sup> June 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant did not appear, and was not represented. The Respondent did not appear, but was represented by Ms Donnelly, solicitor.

After enquiries, the Tribunal discovered that due to administrative oversight, the Applicant had not been advised of how to participate in the Case Management Discussion by conference call from his residence in Nigeria, which conference call facility had been arranged. As a result, the Tribunal adjourned the Case Management Discussion to a further date to allow the Applicant to participate by conference call.

### **Continued Case Management Discussion**

A continued Case Management Discussion was held on 31<sup>st</sup> July 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant participated by conference call from Nigeria, and was not represented. The Respondent did not appear, but was again represented by Ms Donnelly, solicitor.

Both parties were in agreement that the Applicant had rented a room together with other shared facilities in the Property from the Respondent. That arrangement commenced in August 2018 and continued for approximately four months, after which the Applicant quit the Property.

The parties disagreed on a number of other factual issues. The Applicant asserted that the Respondent had told him that he was entering into a short tenancy agreement, that he had asked her for a written copy of its terms which she had refused to provide, that he shared the Property with two other tenants, and that the Respondent did not at any point reside at the Property whilst he was living there.

The Respondent asserted that she resided at the Property as her only or principal home whilst the Applicant was living there. As a result, the agreement could be neither an assured tenancy nor a private residential tenancy, and accordingly the Applicant had no valid legal basis to seek an order from the Tribunal to draw up the terms of any such tenancy agreement.

It appeared to the Tribunal that if the agreement commenced in August 2018, then it could not have been an assured tenancy agreement for the reasons later explained in this decision, but might possibly be capable of being categorised as a private residential tenancy.

The Tribunal explained the legal position to the Applicant. If the agreement was capable of being classified as a private residential tenancy, then he might bring an application to the Tribunal under Rule 105 (Application to draw up terms of tenancy) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, which concerns similar provisions to those under section 30 of the *Housing (Scotland) Act 1988* in relation to assured tenancies, in terms of section 14 of the *Private Housing (Tenancies) (Scotland) Act 2016* in relation to private residential tenancies.

It became clear to the Tribunal that the Applicant had misunderstood that a tenancy agreement of short duration was legally categorised as a short assured tenancy. The Applicant having appreciated the correct position, the Tribunal advised the Applicant of the possibility of requesting the opportunity to amend his application to one under Rule 105, and of the possibility of inviting the Tribunal to continue this matter to allow him to obtain legal advice.

The Applicant indicated that he wished to amend his application to make it one under Rule 105 and section 14 of the *Private Housing (Tenancies) (Scotland) Act 2016*, and that he also sought a continuation of this continued Case Management Discussion to allow him to obtain legal advice.

Ms Donnelly objected to the Applicant being allowed by the Tribunal to amend his application at this stage. She submitted that the application had clearly been brought under Rule 68 and section 30 of the *Housing (Scotland) Act 1988*. As the agreement commenced in August 2018, it could not be an assured tenancy under the *Housing (Scotland) Act 1988*, and this application was incompetent.

It would be unfair and inequitable to allow the basis of the application to be radically amended at this late stage, and would result in unfairness to the Respondent, who would incur yet further substantial legal costs in this matter continuing further if the application was allowed to be amended, and the Applicant was allowed to have the application continued to obtain legal advice.

Further, Ms Donnelly noted that section 14(3) of the *Private Housing (Tenancies) (Scotland) Act 2016* provides that a tenant may not make an application under section 14 asking the Tribunal to draw up the terms of the tenancy unless the tenant has given the landlord notice of the tenant's intention to make the application, and the notice period described in section 17 has expired. No such notice has been given to the Respondent by the Applicant, and so the Applicant was not entitled to bring any application under Rule 105 until he has done that.

The Applicant accepted that he had not given any such notice, but was keen to emphasise that he wished the application to proceed.

### **Statement of Reasons**

This application is brought under Rule 68 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, which concerns applications made under section 30(2) of the *Housing (Scotland) Act 1988*.

Sections 30(1) and (2) of the *Housing (Scotland) Act 1988* provide:

**“30.— Duty of landlord under assured tenancy to provide written tenancy document and weekly rent book.**

(1) It shall be the duty of the landlord under an assured tenancy (of whether duration)—

(a) to draw up a document stating (whether expressly or by reference) the terms of the tenancy;

(b) to ensure that it is so drawn up and executed that it is probative or holograph of the parties; and

(c) to give a copy of it to the tenant.

(2) On application by a tenant under an assured tenancy, the First-tier Tribunal shall by order—

(a) where it appears to the Tribunal that the landlord has failed to draw up a document which fairly reflects the existing terms of the tenancy, draw up such a document or, as the case may be, adjust accordingly the terms of such document as there is; and

(b) in any case, declare that the document (as originally drawn up or, where the Tribunal has drawn it up or adjusted it, as so drawn up or adjusted) fairly reflects the terms of the assured tenancy;

and, where the Tribunal has made such a declaration in relation to a document which the Tribunal has drawn up or adjusted, it shall be deemed to have been duly executed by the parties as so drawn up or adjusted.”

Accordingly, this section only applies to the drawing up by the Tribunal of a document reflecting the existing terms of an assured tenancy.

Section 1A of the *Housing (Scotland) Act 1988* provides:

**“12.— Assured tenancies.**

(1A) A tenancy cannot be an assured tenancy if it is granted on or after 1 December 2017.”

Any agreement between the parties is accepted by them to have commenced in August 2018, and accordingly cannot be an assured tenancy. For that reason, this application is incompetent.

The Tribunal was invited by the Applicant to allow him to amend his application to bring it under Rule 105 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, which concerns applications made under section 14(1) of the *Private Housing (Tenancies) (Scotland) Act 2016*.

Sections 14(1) and (3) of the *Private Housing (Tenancies) (Scotland) Act 2016* provide:

**“14 Application to First-tier Tribunal to draw up terms**

(1) The tenant under a private residential tenancy may (subject to subsection (3)) apply to the First-tier Tribunal asking it to draw up the terms of the tenancy under section 15 if the landlord—

(a) has a duty under section 10 to provide the tenant with a document which sets out all of the terms of the tenancy, and

(b) the landlord has not provided that document to the tenant.

(3) The tenant may not make an application under subsection (1) unless the tenant has given the landlord notice of the tenant’s intention to make the application and the notice period described in section 17 has expired.”

Assuming that the agreement could be categorised as a private residential tenancy agreement (which the Respondent does not accept, on the basis that she asserts that she was a resident landlord which means that the agreement could not be categorised as a private residential tenancy agreement), in order to bring an application to the Tribunal under section 14(1), the Applicant must first give the Respondent notice of his intention to make the application in terms of section 14(3). He has not done so, and accordingly until he does give such notice, he may not make such an application.

Rule 14 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended states:

**“14.— Amendment raising new issues**

(1) Where the effect of any amendment of the written representations under rule 13(1)(a) by the party would be to introduce a new issue, such amendment may only be made with the consent of the First-tier Tribunal and on such conditions, if any, as the First-tier Tribunal thinks fit.”

The Tribunal considers that the proposed amendment of the application to change it from one brought in relation to an assured tenancy in terms of Rule 68 under section 30 of the *Housing (Scotland) Act 1988*, to one brought in relation to a private residential tenancy under Rule 105 under section 14(1) of the *Private Housing (Tenancies) (Scotland) Act 2016*, does introduce a new issue, and accordingly may only be made with the consent of the First-tier Tribunal.

Rules 2 and 3 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended state:

**“2.— The overriding objective**

(1) The overriding objective of the First-tier Tribunal is to deal with the proceedings justly.

(2) Dealing with the proceedings justly includes—

- (a) dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties;
- (b) seeking informality and flexibility in proceedings;
- (c) ensuring, so far as practicable, that the parties are on equal footing procedurally and are able to participate fully in the proceedings, including assisting any party in the presentation of the party's case without advocating the course they should take;
- (d) using the special expertise of the First-tier Tribunal effectively; and
- (e) avoiding delay, so far as compatible with the proper consideration of the issues.

**3.— Effect of the overriding objective**

(1) The Chamber President and the First-tier Tribunal must seek to give effect to the overriding objective when—

- (a) exercising any power under these Rules; and
- (b) interpreting any rule.

(2) In particular the Chamber President and the First-tier Tribunal must manage the proceedings in accordance with the overriding objective.

(3) The parties must assist the Chamber President or the First-tier Tribunal to further the overriding objective.”

The Tribunal considers that it would not be just to allow an amendment which entirely alters the legal basis for the application, and the Tribunal rule of procedure under which it is brought.

To allow any such amendment would in any event be pointless, as in the absence of the Applicant having given the Respondent notice of his intention to make application under section 14(1) of the *Private Housing (Tenancies) (Scotland) Act 2016*, an application under Rule 105 would also not be competent.

In those circumstances, there is nothing to be gained in granting the Applicant’s request for an adjournment to obtain legal advice, as the application if amended to be brought under Rule 105 would also be incompetent. To allow the proposed amendment would delay the resolution of this application, and cause unnecessary and pointless further expense to both parties.

The Tribunal notes that if he so wished, the Applicant could potentially give the Respondent notice under section 14(3), and after the expiry of the notice period described in section 17, thereafter bring a fresh application to the Tribunal under Rule 105.

However, in light of the Tribunal’s decision to dismiss this application for the above reasons, it is unnecessary for it to speculate upon the legal merits of any such fresh application in the event that the Applicant were to bring one, and it expresses no view on that matter standing the factual disputes between the parties relating to the circumstances of the creation or otherwise of a private residential tenancy.

## **Decision**

In these circumstances, the Tribunal 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.**

**Neil Kinnear**

**31 July August**

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**Legal Member/Chair**

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**Date**