



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber):

Preliminary issue

Reference number: FTS/HPC/TE/18/1941 and FTS/HPC/PR/18/2269

**Re: Room with shared accommodation, ground floor flat, 118 Stanley Street, Aberdeen, AB10 6UQ
("the let property")**

The Parties:

**Mr Hakim Saumtally, 40 Esslemont Avenue, 2nd Floor left, Aberdeen, AB25 1SP
("the Applicant")**

**Mr Alan Barclay, 118 Stanley Street, Aberdeen, AB10 6UQ
("the Respondent")**

Tribunal members

Ms. Susanne L. M. Tanner Q.C. (Legal Member)

Mr. Nick Allan, Ordinary Member

Mr. John Blackwood, Ordinary Member

Decision – Preliminary Issue

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the tribunal") determined:

- i. the room with shared accommodation at 118 Stanley Street, Aberdeen, AB10 6UQ ("the let property"), let by the Applicant from the Respondent, would not be regarded as a separate dwelling were it not for the terms of the tenancy entitling the Applicant to use property in common with another person ("shared accommodation");**
- ii. from the time the Applicant's tenancy was granted of the let property, one of the persons with whom the Applicant had the right to use the shared accommodation was the Respondent, who was the landlord under the**

tenancy and had a right to use the shared accommodation in the course of occupying his home;

- iii. the Respondent was a “resident landlord”, in terms of Schedule 1, para 8 of the Private Housing (Residential Tenancies)(Scotland) Act 2016 (“the 2016 Act”);**
- iv. because a tenancy cannot be a private residential tenancy if Schedule 1, paragraph 8 applies to it, the Applicant’s tenancy of the let property was not a private residential tenancy as defined in Section 1(c) of the 2016 Act; and**
- v. the tribunal therefore dismissed the whole proceedings as it does not have jurisdiction in relation to the proceedings, in terms of Rule 27(1) of the 2017 Rules.**

Procedural background

1. The Applicant made two applications (TE/18/1941 and PR/16/2269) which were referred to the present tribunal for determination and conjoined for the purposes of further procedure.
2. A preliminary issue was raised by the Respondent in relation to both applications. in that he submitted that the Applicant’s tenancy of a room with shared accommodation at 118 Stanley Street, Aberdeen (“the let property”) was not a private residential tenancy because the Respondent was a “resident landlord” within the meaning of Schedule 1, para. 8 of the 2016 Act.
3. An oral hearing was fixed in relation to the preliminary issue in both applications.
4. Both parties lodged indexed paginated bundles for the oral hearing. Additional productions were added by both parties at various stages of procedure and consolidated bundles were produced.
5. The tribunal issued a number of procedural directions and production orders before and during the oral hearing process.

Oral hearing: preliminary issue

6. The oral hearing proceeded over nine days, the first three in person on 6 November 2019 at the Credo Centre, Aberdeen; and 14 and 15 January 2020 in Jury’s Inn,

Aberdeen. There was an adjournment due to Covid-19 restrictions and closure of the tribunal chamber, following which the hearing moved to video conference for the remainder of the hearing days on 9 October and 27 November 2020; and 19 January, 9 February, 2 March and 12 April 2021.

7. The Applicant appeared for all hearing days and represented himself.
8. The Respondent appeared for all hearing days and represented himself. He was supported by Mr Steele.
9. Both parties led evidence.
 - 9.1. The Applicant gave evidence. He did not call any other witnesses.
 - 9.2. The Respondent gave evidence. He did not call any other witnesses.
10. Following evidence being led, both parties produced a list of proposed findings in fact and responded to the other party's proposed list of findings in fact. A number of findings in fact which were relevant to the preliminary issue under determination were agreed between the parties.
11. Both parties lodged bundles of legal authorities and made written and oral submissions.
12. During the oral hearing process, the parties advised the tribunal that they had discussed possible resolution of both applications but on the last oral hearing day on 12 April 2021, the tribunal was advised that no agreement had been reached and the tribunal therefore proceeded to deliberate having heard parties' evidence and submissions.

Findings in Fact

13. The tribunal makes the following findings in fact:
 - 13.1. The Respondent became the sole registered proprietor of the property at 118 Stanley Street, Aberdeen, AB10 6UQ on 28 December 2005.
 - 13.2. The Respondent's property at 118 Stanley Street is a ground floor flat with a hall, lounge, kitchen, bedroom with en-suite (Bedroom A), second bedroom (Bedroom B) and bathroom.
 - 13.3. The Respondent, his wife and their children lived together in the property at 118 Stanley Street until in or about October 2017.

- 13.4. Prior to October 2017, during the time that the Respondent and his family lived in 118 Stanley Street, they established connections within the locality of the property.
- 13.5. In or around October 2017, another family member of the Respondent was prescribed a programme of in Family Based Therapy (“FBT”) which required the ill family member to have their own bedroom in a family environment with the Respondent and his wife and family.
- 13.6. The flat at 118 Stanley Street was not a suitable place for the family member’s FBT because there were not enough bedrooms for the Respondent and his wife, their two younger children and the additional family member.
- 13.7. In or about October 2017 the Respondent and his wife took the tenancy of a property at 258 Mugiemooss Road, in the Bucksburn area of Aberdeen, in order to provide the FBT which had been prescribed for the ill family member, for the period 6 October 2017 to 5 July 2018 (“the Bucksburn property”).
- 13.8. The Respondent and his wife initially failed an affordability check for the Bucksburn property but an agreement was then reached with the letting agent that they could rent the property.
- 13.9. The Respondent’s wife and their two children lived in the Bucksburn property full time from in or around November 2017 until late 2018.
- 13.10. The Respondent’s ill family member who had been prescribed FBT resided between a medical facility and the house at Bucksburn on a prescribed programme of release.
- 13.11. The Bucksburn property was situated around four miles away from the flat at 118 Stanley Street.
- 13.12. The Respondent and his wife and their family had the intention to return to the property at 118 Stanley Street after their family member’s programme of FBT was completed.
- 13.13. During the Respondent’s family member’s period of FBT and the rental of the Bucksburn property, the Respondent required to let rooms in the flat at 118 Stanley Street for financial reasons.
- 13.14. The Respondent applied for Landlord Registration and his application was approved on 12 December 2017, Registration No. 636234/100/12121.

- 13.15. The Council Tax account in the name of the Respondent was initially transferred from 118 Stanley Street to the Bucksburn property in or around November 2017 when the new lease was taken, due to actions of the Council Tax office rather than the Respondent intentionally creating a new account at the rented house. The Respondent was not aware that this had occurred until in or around 2020.
- 13.16. In or about January or February 2018, the Applicant accepted a place at Robert Gordon University, Aberdeen to study a taught Masters degree in Project Management, commencing in or about February 2018.
- 13.17. In or about January 2018 the Respondent advertised on a website 'spareroom.co.uk' for an en-suite bedroom (Bedroom A) to let within 118 Stanley Street, with shared accommodation.
- 13.18. The Applicant searched for properties to let on 'spareroom.co.uk'.
- 13.19. The Applicant contacted the Respondent on or about 2 February 2018 to enquire about the room with shared accommodation to let at 118 Stanley Street.
- 13.20. Some information was exchanged between the Applicant and Respondent by text and telephone and a viewing for Bedroom A with shared accommodation was arranged for the evening of 4 February 2018 at about 8.30pm.
- 13.21. The Applicant had arranged to view other properties the same evening as a 'back up' should he not have been satisfied with the accommodation of Bedroom A with shared accommodation in the flat at 118 Stanley Street.
- 13.22. The Applicant travelled from England by car with his possessions and attended at the flat at 118 Stanley Street for the viewing, where he met the Respondent.
- 13.23. During the viewing the Respondent showed the applicant the property which had been advertised (Bedroom A with en-suite bathroom, plus shared accommodation of hall, kitchen and bathroom).
- 13.24. The Respondent showed the Applicant the door to a locked room and the Respondent indicated that it was his room which was retained for his personal use and that he had personal belongings in that room ("the Respondent's room").

- 13.25. The Applicant formed the impression that he was moving into the let property with shared accommodation and that another tenant would be moving into the other bedroom at some point and that the Respondent was retaining the Respondent's room for storage and/or office purposes.
- 13.26. The Applicant had other properties to view that evening and was not limited to letting the room with shared accommodation in 118 Stanley Street if he was not satisfied with the occupancy arrangements.
- 13.27. The Applicant agreed to let Bedroom A during the viewing and moved into the flat at 118 Stanley Street on the night of 4 February 2018, when the tenancy started.
- 13.28. The Respondent gave the Applicant the keys to the flat at 118 Stanley Street and left to travel to the Bucksburn property.
- 13.29. After the Respondent left 118 Stanley Street, the Applicant moved into Bedroom B instead of Bedroom A, without discussion without prior agreement of the Respondent.
- 13.30. Bedroom B with shared accommodation became the Applicant's let property ("the let property") and remained the let property throughout his tenancy.
- 13.31. A written tenancy agreement was entered into and it was signed by the Applicant on 1 March 2018.
- 13.32. The tenancy agreement entitled the Applicant to single occupancy of one room in the ground floor flat, 118 Stanley Street, Aberdeen with a share of the kitchen/dining room and bathroom therein.
- 13.33. The period of let began on 4 February 2018, with no end date and either party could provide one month's notice of termination.
- 13.34. During his taught Masters course at Robert Gordon University, the Applicant attended the university campus an average of three days per week.
- 13.35. During the period of the Applicant's tenancy of the let property, the Respondent had his own businesses and also worked as a contractor.
- 13.36. During the period of the Applicant's tenancy, the Respondent travelled regularly for work purposes within the UK and abroad.

- 13.37. From in or around April 2018, the Respondent worked on a contract in Newcastle for a few days during each mid-week, however the pattern was a little irregular. He travelled by train, returning to Aberdeen late on Friday nights.
- 13.38. During the Applicant's tenancy of the let property, from 4 February 2018 to on or about 6 August 2018, the Respondent was at the flat at 118 Stanley Street on at least twelve occasions while the Applicant was in the let property and to the knowledge of the Applicant, some of which were at night.
- 13.39. During the Applicant's tenancy of the let property, the Respondent's room at 118 Stanley Street contained a desk, a chair, a table, office equipment, shelving, boxes, files and personal items.
- 13.40. During the Applicant's tenancy of the let property, the Respondent's room at 118 Stanley Street did not contain a bed or a couch.
- 13.41. During the Applicant's tenancy of the let property the Respondent had access to the shared accommodation including the hall, main bathroom and kitchen.
- 13.42. During the Applicant's tenancy of the let property, the Respondent kept a few food and drink items in the fridge in the kitchen.
- 13.43. During the Applicant's tenancy of the let property, the Respondent's ex-wife and their children lived in another property in Stanley Street.
- 13.44. During the Applicant's tenancy of the let property, the Respondent had a local connection with the parish church in the locality of 118 Stanley Street.
- 13.45. During the Applicant's tenancy of the let property, one of the Respondent's sons attended nursery within the area of 118 Stanley Street.
- 13.46. During the Applicant's tenancy of the let property, the Respondent and his wife and their two children were registered with a doctor's surgery within the area of 118 Stanley Street.
- 13.47. During the Applicant's tenancy of the let property, the Respondent received personal correspondence at 118 Stanley Street, including Inland Revenue documents, bank and building society statements, credit card statements, insurance documents, mortgage statements, vehicle registration certificates, factoring letters and National Trust for Scotland membership,

- 13.48. During the Applicant's tenancy of the let property, the Respondent paid the Council Tax bills for the flat 118 Stanley Street.
- 13.49. During the Applicant's tenancy of the let property, the Respondent paid the utility bills for the flat at 118 Stanley Street.
- 13.50. During the Applicant's tenancy of the let property, the Respondent was on the electoral register at 118 Stanley Street.
- 13.51. During the Applicant's tenancy of the let property, 118 Stanley St was used as the registered business address for the Respondent's companies.
- 13.52. During the Applicant's tenancy of the let property, the Respondent had use of the main bathroom and kitchen at 118 Stanley Street.
- 13.53. During the Applicant's tenancy of the let property, the Applicant went abroad on holiday for around a month from on or about 7 June 2018.
- 13.54. During the Applicant's tenancy of the let property, another tenant moved into Bedroom A with shared accommodation in 118 Stanley Street on 24 June 2018.
- 13.55. During the Applicant's tenancy of the let property, the Applicant did not make any complaints about the Respondent's use of 118 Stanley Street, including attendance in the property or use of the shared accommodation, including storage of limited food and drink items in the fridge.
- 13.56. The Applicant's tenancy of the let property ended on or about 6 August 2018.
- 13.57. The Respondent let Bedroom A to another individual, Mr Olowojebutu from in or around 4 March 2018. The Respondent let the let property to another individual, Mr Hausard, for a period of time from on or about 24 June 2018. The Respondent issued both individuals with tenancy documents in similar terms to that provided to the Applicant (other than the bedroom description for Bedroom A and the respective start dates). In relation to the Mr Hausard only, on 9 August 2018, several days after the Applicant's tenancy ended, the Respondent sent Mr Hausard an email with a link to the supporting notes for a private residential tenancy.
- 13.58. After the Respondent's family member's programme of FBT ended, the Respondent and his wife and their children returned to live in the flat at 118 Stanley Street in or about late 2018.

Findings in fact and law

14. The tribunal makes the following findings in fact and law:

- 14.1. The let property was let to the Applicant as a separate dwelling, despite it lacking certain features or facilities, as the tenancy agreement entitled the Applicant to use property in common with another person (“shared accommodation”) and the let property would be regarded as a separate dwelling were it to include some or all of the let accommodation, in terms of Sections 1(1)(a) and 2(4) of the 2016 Act;
- 14.2. The Applicant occupied the let property as his only or principal home during the tenancy, in terms of Section 1(1)(b) of the 2016 Act;
- 14.3. From the time the Applicant’s tenancy was granted, one of the persons with whom the Applicant had a right to use shared accommodation was the Respondent, who had the interest of the landlord under the tenancy and had the right to use the shared accommodation in the course of occupying the Respondent’s home, in terms of Schedule 1, para. 8 of the 2016 Act.
- 14.4. The Applicant’s tenancy was not a private residential tenancy in terms of Schedule 1, paras 7 and 8 and Section 1(1)(c) of the 2016 Act.

Discussion

15. The preliminary issue for the tribunal’s determination was whether the Applicant’s tenancy of the Property was a private residential tenancy as defined in Section 1 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”).
16. The relevant statutory provisions of the 2016 Act are as follows:

Section 1 Meaning of private residential tenancy

- (1) 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.*
- (2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.*

Section 2 Interpretation of section 1

- (1) This section makes provision about the interpretation of section 1.*
- (2) A tenancy is to be regarded as one under which a property is let to an individual notwithstanding that it is let jointly to an individual, or individuals, and another person.*
- (3) A tenancy is to be regarded as one under which a property is let as a separate dwelling, despite the let property including other land, where the main purpose for letting the property is to provide the tenant with a home.*
- (4) A tenancy is to be regarded as one under which a property is let as a separate dwelling if, despite the let property lacking certain features or facilities—*
 - (a) the terms of the tenancy entitle the tenant to use property in common with another person (“shared accommodation”), and*
 - (b) the let property would be regarded as a separate dwelling were it to include some or all of the shared accommodation.*
- (5) In a case where two or more persons jointly are the tenant under a tenancy, references to the tenant in section 1(1)(b) and in subsection (3) are to any one of those persons.*

Schedule 1 TENANCIES WHICH CANNOT BE PRIVATE RESIDENTIAL TENANCIES > Resident landlord > para. 7

A tenancy cannot be a private residential tenancy if paragraph 8 or 9 applies to it.

Schedule 1 TENANCIES WHICH CANNOT BE PRIVATE RESIDENTIAL TENANCIES > Resident landlord > para. 8

This paragraph applies to a tenancy if—

- (a) the let property would not be regarded as a separate dwelling were it not for the terms of the tenancy entitling the tenant to use property in common with another person (“shared accommodation”), and*
- (b) from the time the tenancy was granted, the person (or one of the persons) in common with whom the tenant has a right to use the shared accommodation is a person who—*
 - (i) has the interest of the landlord under the tenancy, and*
 - (ii) has a right to use the shared accommodation in the course of occupying that person's home.*

17. There was no dispute between the parties that the let property was let to the Applicant as a separate dwelling, in that despite the let property lacking certain

features or facilities, the terms of the tenancy entitled the Applicant to use property in common with another person or persons (“shared accommodation”) and the let property would be regarded as a separate dwelling were it to include some or all of the shared accommodation (Section 1(1)(a) and Section 2(4)).

18. There was no dispute between the parties that the Applicant occupied the let property as his only or principal home during the tenancy (Section 1(1)(b)).
19. The dispute centred on whether the tenancy was one which Schedule 1 specifies cannot be a private residential tenancy (Section 1(1)(c)), in particular Schedule 1, paragraphs 7 and 8 of the 2016 Act. The core of the dispute was whether the way in which the Respondent was using the Respondent’s room with shared accommodation at 118 Stanley Street, amounted to “**resident landlord**” “*in the course of occupying that person’s home*” as specified in Schedule 1, para. 8 of the 2016 Act.
20. The tribunal was therefore required to interpret the phrase “*in the course of occupying that person’s home*”, as it appears in Schedule 1, paragraph 8 of the 2016 Act and to decide on the facts whether the Respondent was so occupying the Respondent’s room.
21. The phrase “*in the course of occupying that person’s home*” is not defined in the 2016 Act. There are no binding Scottish authorities on interpretation of Schedule 1, paragraphs 7 and 8 of the 2016 Act.
22. The Applicant cited the following authority: **Affleck v Bronsdon [2020] UT44; UTS/AP/19/0011**, highlighting paragraphs 14, 19 and 29.
23. The Respondent cited the following authorities:
 - 23.1. **Crawley Borough Council v Sawyer [1988] 20 HLR 98**, and reference to four later cases in which **Crawley** was followed or cited: *Sutton v Norwich City Council [2020] UKUT 90 (LC)*, at 67; *JP v Bournemouth BC [2018] UKUT 75 (AAC)*, at 39 and 46; *Islington LBC v Boyle and anr [2011] EWCA Civ 1450*, at 58 and 60; and *Hammersmith and Fulham v Clarke [2000] EWCA Civ 3032*, at 25-31;
 - 23.2. **Williams v. Horsham D.C [2004] EWCA Civ 39; [2004] 1 W.L.R. 1137**
 - 23.3. **Ward v Kingston upon Hull City Council, 1993 WL 962695 (1993)**
 - 23.4. **Stevenson v Rogers 1991 S.C. 164; 1992 S.L.T. 558**
24. As the parties had some access issues to law reports, the tribunal provided both parties with copies of reports of all authorities cited in order to ensure that the proceedings were just and parties had the opportunity to make written and oral submissions having considered them.

25. The Scottish Upper Tribunal authority of **Affleck v Bronsdon**, above, cited by Applicant, was relevant to a different aspect of the definition of a private residential tenancy (“PRT”) in terms of Sections 1(1)(a) and 2(4) of the 2016 Act, which was not in dispute in relation to the present preliminary issue, namely that the Applicant’s bedroom with shared accommodation was capable of being a PRT, provided that it was not excluded from the definition of a PRT for another reason provided for in the 2016 Act.
26. Otherwise, the authorities cited to the tribunal by both parties were neither binding, nor persuasive, because they dealt with different statutory provisions from the one under consideration and were not entirely relevant to the issues for the tribunal’s determination, with the majority of them being English authorities and not directly in point. The only Scottish authority cited by the Respondent was **Stevenson v Rogers**, above, in which the Outer House considered the criteria for determining where a person was “*solely or mainly resident*” and whether subjective factors were relevant for the purposes of the community charge, in terms of the Abolition of Domestic Rates Etc. (Scotland) Act 1987. As well as dealing with a statutory provision which related to taxation of a property occupant, rather than the landlord/tenant relationship in private tenancies, the phrase “*solely or mainly resident*”, which was under consideration, is different from the phrase, “*in the course of occupying that person’s home*” for the purposes of a “resident landlord”, in terms of paragraph 8 of Schedule 1 to the 2016 Act. In particular, there is no requirement in the latter paragraph, for the purposes of deciding whether there is a resident landlord, that the home is the landlord’s sole or main home. For those reasons the tribunal did not consider the case to be of assistance.
27. The remainder of the authorities cited by the Respondent were English. **Crawley BC v Sawyer**, above, was concerned with provisions in the English Housing Act 1985. The Appeal Court required to determine whether there was a secure tenancy, which required the court to be satisfied that the tenant condition contained in section 81 of the Housing Act 1985 must be satisfied, that is the premises must be occupied as the tenant’s “only or principal home.” That phrase is not defined in the 1985 Act. However, that case related to a tenant’s use of a property, rather than a landlord’s, and in any event, there is no requirement in paragraph 8 of Schedule 1 to the 2016 Act, for the purposes of deciding whether there is a resident landlord, that the property is the landlord’s “only or main home”. For those reasons the tribunal did not find the case to be of assistance.
28. **Williams v Horsham DC**, above, was an English Court of Appeal cases in which the issue under consideration was a person’s occupation for Council tax discount purposes, in particular whether a Council taxpayer owning a cottage and living in a house provided by his employer had the cottage as his “*sole or main residence*”

for the purposes of the Local Government Finance Act 1992 (as amended). **Ward v Kingston upon Hull CC**, above, was an appeal to the Queen’s Bench Division from a tribunal’s decision that the appellant was liable to community charge for a property in England when he lived for most of the year in Saudi Arabia where he was employed, although he had a certain amount of annual leave. His wife continued to live at the property which they owned jointly in England. He sought to appeal against a decision that he was properly registered for personal community charge on the ground that the house in England was not his “sole or main residence”. As noted above, there is no “sole or main residence” test in deciding whether there is a resident landlord for the purposes of paragraph 8 to Schedule 1 of the 2016 Act. For those reasons, the tribunal did not consider the cases to be of assistance.

29. The tribunal proceeded to consider the parties’ evidence and submissions on the basis that the tribunal required to interpret the meaning of the phrase “*in the course of occupying that person’s home*” for the purposes of paragraph 8 to Schedule 1 of the 2016 Act; before determining whether the test was met.

30. It was clear from discussion of the parties’ proposed findings in fact that many relevant facts were not in dispute although there was dispute around the nature of the Respondent’s use of the Respondent’s room and shared accommodation. The parties respectively invited the tribunal to make certain findings and their submissions respectively focussed on the interpretation to be placed on those findings in fact when deciding whether the Respondent was using the Respondent’s room with shared accommodation at 118 Stanley Street “*in the course of occupying that person’s home*”.

31. The parties’ evidence and submissions in relation to their respective positions can be summarised as follows:

31.1. The Applicant submitted that the Respondent’s use of the Respondent’s room was not used in the course of occupying the Respondent’s home. He submitted that the Respondent had access to the Respondent’s room, which the Applicant submitted should be viewed as an office or storeroom with ancillary facilities (kitchen and bathroom) and that it was a fiction to suggest that the Respondent was living in the Respondent’s room as a home, given that the Respondent’s wife and two children and another family member were residing in another property around four miles away. The Applicant stated that he accepted that a person could have two homes but submitted that one could not have two homes that were located as close to one another as the flat at 118 Stanley Street and the Bucksburn property.

- 31.2. The Applicant submitted that the property had been advertised on spareroom.co.uk as having a “live out” landlord (however, the available evidence following a production order to the advertiser by the tribunal meant that this matter was unable to be determined retrospectively by independent evidence). The Applicant stated that he would not have taken the tenancy of the let property had he known that the Respondent was a resident landlord as he had rented from a resident landlord before and did not like that living situation. The Applicant was under the impression that there would be another tenant moving into the other bedroom during his tenancy and that he would share the shared accommodation with that other tenant.
- 31.3. The Applicant accepted that he personally saw the Respondent in the flat at 118 Stanley Street around twelve to fifteen times during the period of the Applicant’s tenancy of the let property. He also accepted that the Respondent may have used the shared accommodation of kitchen and bathroom during the Applicant’s tenancy and that the Applicant took no issue with that use. The Applicant did not see inside the Respondent’s locked room at any time during the Applicant’s tenancy of the let room. However, as part of the tribunal process, the Applicant had access to photographs lodged by the Respondent which had been taken post-tenancy and were said in evidence by the Respondent to show a similar view to the Respondent’s room as it was during the tenancy. The Applicant submitted that those images proved that the room was not a bedroom in that there was no bed in the Respondent’s room and he submitted that a bed would be required for the room to be the Respondent’s home.
- 31.4. The Respondent led evidence that he and his wife and two young children lived together in 118 Stanley Street until late 2017. At that point the illness of a family member who was under medical care necessitated the family also taking a tenancy of another property for a programme of FBT because the flat at 118 Stanley Street was not suitable for the therapy given its size. The Respondent’s intention was for his family to return to 118 Stanley Street when the medical programme was completed, the duration of which was not known at the outset but would only be for the period of the family member being a minor, which was some months. The Respondent’s position about his use of 118 Stanley Street during the period of the Applicant’s tenancy of the let property was that he retained and continued to use the Respondent’s room with shared accommodation as his home.
- 31.5. The Respondent stated that in early 2018 he advertised for let the two bedrooms 118 Stanley Street (Bedroom A and Bedroom B) with shared accommodation for financial reasons, as he and his wife initially failed the credit check for the tenancy of the Bucksburn property. In relation to how the

let property was advertised, he stated that he had not deliberately advertised the Property as having a “live out” landlord and that if that appeared on the advert it was not because of any conscious step taken by him in the advertising process (as noted above, the company was unable to confirm retrospectively how the room had been advertised). He stated that he advised the Applicant during the initial viewing that during the Applicant’s tenancy he would be making use of the Respondent’s room, which would remain locked and unavailable to the Applicant and other tenants throughout the Applicant’s tenancy.

31.6. The Respondent stressed his relationship with the Respondent’s room with shared accommodation both prior to and during the Applicant’s tenancy of the let property. He stated that the Respondent’s room was used for his and his family’s own purposes, which included working, storing items, staying overnight after returning from work trips to England and abroad, using the main bathroom, using the kitchen to make food and drinks and on occasions for his wife and young children, principally in relation to their son’s attendance at a local nursery. The Respondent did not seek to maintain that he stayed in the Respondent’s room every night during the Applicant’s tenancy or even on every occasion that the Respondent was in the flat at 118 Stanley Street. In fact, he stated that from April 2018 onwards he regularly travelled away from Aberdeen for work and that on occasions where his ill family member was at the Bucksburn property for FBT he tended to stay overnight there. However, he maintained that he never gave up residency of the Respondent’s room with shared accommodation at 118 Stanley Street as his home. The Respondent paid all utility bills and Council tax during the Applicant’s tenancy of the let property. The Respondent stressed the many personal and business connections he retained with the flat at 118 Stanley Street during the Applicant’s tenancy of the let property.

32. The tribunal took account of both parties’ evidence and submissions before reaching its decision.

33. It was not disputed and the tribunal was satisfied that the Applicant’s room with shared accommodation was a separate dwelling which the Applicant was occupying as his only or principal home during his tenancy, within the definitions in Sections 1 and 2 and Schedule 1, paragraph 8 of the 2016 Act.

34. The tribunal required to decide whether the Respondent was using the Respondent’s room with shared accommodation at 118 Stanley Street “*in the course of occupying that person’s home*”, for the purposes of Schedule 1, paragraph 8 of the 2016 Act. Because there is no definition in the 2016 Act and no

binding authority on the interpretation of that phrase, the tribunal required to decide the matter on the facts and circumstances of the case.

35. On the basis of the tribunal's findings in fact in the present matter, the tribunal is of the view that the Respondent's use of 118 Stanley Street during the period of the Applicant's tenancy of the let property may be perceived as fairly unusual, given that the Respondent had another property available for his use, around four miles away from 118 Stanley Street, in which the Respondent's wife and young family resided, with an ill family member on a programme of FBT.
36. The tribunal was satisfied that a person can have more than one home simultaneously and considered that it was not for the tribunal, in its interpretation of the phrase "*in the course of occupying that person's home*" in paragraph 8 of Schedule 1 to the 2016 Act to prescribe how a person uses their home or lives their life. As noted above, there is no requirement in paragraph 8 to Schedule 1 that the home in question is the person's sole or main home. The tribunal was satisfied on the evidence presented, including medical evidence, that the Respondent had an ill relative who required medical care with FBT for a period of time from around October 2017 onwards, which could not be accommodated at the 118 Stanley Street flat due to its size. The Respondent had the intention that he and his wife and their children would return to live full time in the 118 Stanley Street property when that family member's course of treatment concluded. The duration of the course of treatment was not known at the outset but was considered likely to be for a period of some months while the family member was a minor. The lease for the Bucksburn property was for the period from 6 October 2017 to 5 July 2018. The tribunal did not consider the fact that the Respondent and his family had rented the Bucksburn property for medical reasons relating to that family member was determinative of whether the Respondent's room with shared accommodation at 118 Stanley Street was occupied by the Respondent as a home during the relevant period.
37. In addition, during the Applicant's tenancy of the let property the Respondent and his wife maintained local connections within the locality of the flat at 118 Stanley Street (for example, children's nursery, doctor, church); the Respondent continued to correspond on personal and business matters at the address; the Respondent paid the Council Tax and utility bills for 118 Stanley Street; and the Respondent also had family members (his ex-wife and older children) living in a property across the road from the flat at 118 Stanley Street, all as recorded in the tribunal's findings in fact.
38. The tribunal accepted the evidence that during the Applicant's tenancy, the Respondent regularly travelled away from Aberdeen for work purposes and that when he was in Aberdeen, he used the Respondent's room with shared

accommodation as a home. The tribunal was satisfied that this was the case despite the availability of the Bucksburn property to the Respondent and the fact that there was no bed or couch in the Respondent's room at 118 Stanley Street during the relevant period. The tribunal was satisfied that the Respondent had been in the flat at 118 Stanley Street, to the knowledge of the Applicant, on at least twelve occasions in the period from February to August 2018, some of which were at night. The tribunal did not consider that overnight stays were essential to the definition of a home for the purposes of paragraph 8 to Schedule 1. Having said that, the tribunal was satisfied that the Respondent had been at the flat during the night on a number of occasions but was unable to determine whether he slept there.

39. Beyond the agreed number of occasions, the Respondent maintained that he and his family were in the Respondent's room and shared accommodation on other occasions of which the Applicant was not aware. The tribunal accepted that the Applicant was out of the property at a University campus for taught classes three days per week and also spent a month abroad on holiday from on or about 6 June 2018 and cannot therefore have known if the Respondent was in 118 Stanley Street more than the twelve to fifteen occasions which were accepted. On the other hand, there was no independent evidence of the Respondent's additional use of the flat at 118 Stanley Street nor that of his family. It was not disputed that items of food and drink were left by the Respondent in the fridge, from which it could be inferred that the Respondent had left them there for his consumption when he was in the flat. The tribunal was unable to determine the exact frequency with which the Respondent used the Respondent's room with shared accommodation, beyond the twelve to fifteen accepted occasions. Throughout the Applicant's tenancy of the let property, the Respondent was consistent with the nature and frequency of his use of the Respondent's room with shared accommodation. The tribunal was satisfied that on every occasion on which it was accepted by the Applicant that the Respondent was in the flat at 118 Stanley Street, the Applicant raised no complaints with the Respondent about his use of the Respondent's room and shared accommodation including his use of the kitchen and bathroom. The Applicant at no time during his tenancy, either in person or by other method, questioned the Respondent about his use of the Respondent's room and shared accommodation. The Respondent's use of the Respondent's room and shared accommodation only became a live issue towards the end of the tenancy when the Applicant sought to end the tenancy when he went on holiday in June 2018, following which a dispute arose between the parties.
40. The tribunal was satisfied that during the period of the Applicant's tenancy of the let property, the Respondent's occupation of the Respondent's room with shared accommodation was in the course of occupying the Respondent's home.

41. The tribunal was satisfied that the Applicant's let property would not be regarded as a separate dwelling were it not for the terms of the tenancy entitling the Applicant to use property in common with another person. The tribunal was satisfied that in this case, the Applicant's shared accommodation was shared with the Respondent, who was the landlord under the tenancy, and latterly another tenant in bedroom A.
42. The tribunal was therefore satisfied on the balance of probabilities that during the Applicant's tenancy, the Respondent was a "*resident landlord*" within the definition in Schedule 1, paragraph 8 of the 2016 Act.
43. For that reason, the tribunal determined that the Applicant's tenancy of the Property was not a private residential tenancy within the meaning of Section 1 and Schedule 1, paras 7 and 8 of the 2016 Act.
44. The tribunal therefore dismissed the whole proceedings as it does not have jurisdiction in relation to the proceedings, in terms of Rule 27(1) of the 2017 Rules.

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.

Ms. Susanne L M Tanner Q.C.
Legal Member/Chair

12 May 2021 (as reviewed 21 May 2021)