



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for payment where a landlord has failed to supply in writing all tenancy terms and/or other specified information, in terms of Rule 105 of the Procedure Rules.

Chamber Ref: FTS/HPC/PR/22/1648

1, The Old Waterhouse, Old Largs Road, Greenock, PA16 9AR being the subjects registered in the Land Register of Scotland under Title number REN121846 ("the Property")

The Parties:-

Michelle Brandt residing at 1, The Old Waterhouse, Old Largs Road, Greenock, PA16 ("The Applicant")

Mrs Maura Ewing residing at 12 Caddlehill Street, Greenock, PA16 8TU ("The Respondent")

Tribunal Members:

Jacqui Taylor (Chairman) and Donald Wooley (Ordinary Member)

1. Background

1.1 Application reference FTS/HPC/PR/22/1648

The Applicant submitted an application to the Tribunal for in terms of Rule 68 of the Procedure Rules, which application was dated 26th May 2022.

1.2 Application reference FTS/HPC/PR/22/1214

The Applicant submitted an application to the Tribunal for in terms of Rule 103 of the Procedure Rules, which application was dated 26th April 2022.

2. Documents lodged with the Tribunal.

Documents lodged with the Tribunal by the Applicant were:

2.1 Letter from the Applicant's solicitor to the Respondent dated 20th January 2022.

2.2 Letter from the Applicant's solicitor to the Respondent dated 28th March 2022, sent by first class recorded delivery post and email to the Alexander Ewing's email address.

2.3 Undated letter from the Respondent regarding the 'deposit to reserve the Property'.

2.4 A copy of two emails dated 28th March 2022 and 25th April 2022 from the Applicant's solicitor to Alex Ewing attaching the Notice to a Landlord under section

14(3) or 16(3)(c) of The Private Housing (Tenancies) (Scotland) Act 2016 of the Tenant's intention to make an application to the FTT in connection with a failure to supply in writing all tenancy terms and/or other specified information.

3. Case Management Discussion.

This case called for a Case Management Discussion (CMD) Conference call at 14.00 on 5th August 2022.

The Applicant attended. The Respondent also attended, together with her husband Alexander Ewing.

3.1 Preliminary matter

Mrs Taylor referred the Applicant to :

(1) the email from the Tribunal administration dated 28th July 2022, which stated:
'We have received an email from Alex Ewing asking to be added as a party to application numbers 1214 and 1648. We attach a copy of the landlord registration entry in respect of the above property which confirms that Alex Ewing is the landlord. We also attach a copy of the title deeds which also confirm that Alexander Ewing is the proprietor. Please confirm if you wish to add Alex Ewing as an additional respondent to these applications.'

And

(2) the email from the Applicant to the Tribunal administration dated 28th July 2022 which stated, *inter alia* :

'I do not understand why Maura Ewing is to be a part of the hearing or wishes to be acknowledged as part of case pertaining to reference no 1214/1648 /1503 . I am happy for Alex Ewing to be present but not Maura Ewing. I would also like to place on record I contacted my landlords wife asking that my last name be put on the tenancy agreement as she did not include it on the deposit receipt. I acknowledge the attached evidence as emailed from the tribunal that Alex Ewing is the sole proprietorship owner and landlord. My Ewing even highlights in previously submitted evidence that I did not pay a deposit (to him) but paid a sum of £800.00 into his wife's private bank account as a " holding fee" he further states she Mrs Ewing has nothing to do with the property.'

Mrs Taylor suggested that there may be some confusion as the Respondent named in the application, submitted to the Tribunal by the Applicant's solicitor is Maura Ewing. Mrs Taylor asked the Applicant if she would wish an adjournment to enable her to consult the solicitor who lodged the application on her behalf as to whether Alexander Ewing should be added as a Respondent. The Applicant confirmed that she wished the opportunity to take advice on this point.

4.3 Oral Representations made by the Applicant.

4.3.1 The Property 1, The Old Waterhouse, Old Largs Road, Greenock is her main residence and she has resided in the Property since 10th January 2022.

4.3.2 It was agreed with the Respondent and her husband Alexander Ewing that the lease would commence on 3rd January 2022 but she first occupied the Property on 10th January 2022.

4.3.3 She has paid rent payments of £850 to the Respondent's Bank of Scotland Account, account number ending 907 on 3rd January, 3rd February, 3rd March, 3rd April, 3rd May, 3rd June, 3rd July and 3rd August all dates of 2022.

4.3.4 She heard about the Property being available to lease through a mutual friend.

4.3.5 She had a meeting with the Respondent on 8th November 2021 and at that meeting she was advised that if she wanted to secure the Property she would have to pay a deposit. She transferred the sum of £800 to the Respondent during that meeting. Anne Lochhead was also present at the meeting. She is no longer friends with Anne Lochhead.

4.3.6 The Property is a five bedroom property and it was clearly understood by the Respondent and Alexander Ewing that she would be residing in the Property with other people.

4.3.7 At the initial meeting with the Respondent she had explained that she had a cat and the cat would live in the Property with her.

4.3.8 On 3rd January 2022 she took her belongings out of storage and moved her belongings into the Property. She had assumed that the lease agreement would be available for signature but it was not.

4.3.9 On 6th January 2022 she had arrived home and found a letter addressed to her from the Respondent and Alexander Ewing, which advised that they had called at the Property and waited patiently for her to enable the lease to be signed but she was not in the Property and she did not arrive home whilst they were waiting. They wished to take the opportunity to outline some criteria, which included the fact that no multiple occupancy of the Property was permitted, no pets were allowed and credit check would be required. As the tenancy terms could not be agreed they invited her to vacate the Property on 3rd February 2022.

4.3.10 She did not vacate the Property on 3rd February 2022, as invited by the Respondent.

4.3.11 During March 2022 she had gone to the Local Authority Council Tax offices to advise them that she was leasing the Property as she was fretting about her council tax liability and did not want to run up arrears.

4.3.12 She has not yet received the tenancy agreement.

4.3.13 As her relationship with the Respondent and Alexander Ewing had deteriorated, she was uncomfortable about allowing the access to the Property. Consequently, in March 2022 she had arranged for an advocacy worker to be present in the Property when access was being exercised. However, she was unable to reach agreement with the Respondent and Alexander Ewing as to the timing of an access appointment with the result that Alexander Ewing did not obtain access to the Property at that time.

4.4 Oral Representations by The Respondent and Alexander Ewing.

- 4.4.1 The rent payments made by the Applicant were paid into their joint account which is held in the names of Mr. and Mrs Ewing.
- 4.4.2 Each rent payment made was received into their account on the 4th of each month.
- 4.4.3 Alexander Ewing is the landlord as he owns the Property.
- 4.4.4 Alexander Ewing is the registered landlord.
- 4.4.5 The Applicant knew that Alexander Ewing was landlord of the Property.
- 4.4.6 The Property had been leased previously but it had been vacant for approximately 6 months before the Applicant took occupancy.
- 4.4.7 They will provide evidence to the Tribunal of the deposit paid, the rent payments made and the names on the account the rent payments were credited to.
- 4.4.8 They will provide the Tribunal with a copy of the draft lease that they had prepared that has never been signed.
- 4.4.9 The holding deposit paid by the Applicant was never a deposit as such. It was a payment made by the Applicant to hold the Property for her between November and January. The arrangement was that they would hold the Property for the Applicant until January if she paid the holding deposit of £800. However, if the Property was sold or rented to somebody else the £800 holding deposit would be returned to the Applicant. If the Property was not sold or let before January they would keep the sum of £800.
- 4.4.10 They had intended to sell the Property but a mutual friend introduced the Applicant to them and they agreed to lease the Property to the Applicant.
- 4.4.11 Whenever they lease out properties they never allow pets or sub letting.
- 4.4.12 They had prepared the draft lease which they took to the Property on five occasions in early January 2022 but the Applicant was never available to sign it. Alexander Ewing advised that he will provide the Tribunal with a copy.
- 4.4.13 Anne Lochhead was present at the meeting on 8th November 2021 and she will be able to attend a hearing as a witness.
- 4.4.14 Alexander Ewing provided a copy of the draft unsigned lease to the Local Authority council tax department in June 2022.

5. Outcome

The Case Management Discussion was continued to a hearing:

5.1 To enable the Applicant to take advice as to whether or not Alexander Ewing should be added as a party to the applications.

5.2 To allow time for the parties to lodge the following documents with the Tribunal:

5.2.1 A copy of the draft lease that had been prepared by Alexander Ewing.

5.2.2 A copy of the statement for the account that the rent payments and holding deposit were credited to, showing the payments made and the account name.

5.2.3 A copy of the letter dated 6th January 2022 sent by the Respondent and Alexander Ewing to the Applicant.

5.3 To enable Anne Lochhead to attend the hearing as a witness.

6 Direction

The Tribunal issued a Direction to the parties dated 7th August 2022.

6.1 The Respondents were required to provide the Tribunal with:

6.1.1 A copy of the draft lease that had been prepared by Alexander Ewing.

6.1.2 A copy of the statement for the account that the rent payments and holding deposit were credited to, showing the payments made and the account name.

6.2 The Applicant was required to provide the Tribunal with:

6.2.1 A copy of the letter dated 6th January 2022 sent by the Respondent and Alexander Ewing to the Applicant.

The required documents were provided but the copy bank statement did not disclose the account name. However, Mrs Ewing confirmed that the account was a joint account in the names of herself and her husband.

7 Hearing

7.1 This case called for a Hearing at 10am on 13th October 2022 at the Glasgow Tribunal Centre.

The Applicant was present. She was accompanied by her supporter Agnieszka McCall.

The Respondent was present.

7.2 Preliminary Matters.

7.2.1 The Applicant had sent an email to the Tribunal requesting the change to rule 105 on 21st June 2022. The original application referred to rule 68 but the paper apart that formed part of the original application referred to section 105. As the paper apart referred to the correct rule number the Tribunal were satisfied that the respondent had notice that the application was intended to be an application to draw up the tenancy terms of a private residential tenancy. Accordingly, the Tribunal confirmed that the application had been altered to an application under Tribunal Rule 105.

7.2.2 Mrs Brandt confirmed that she had taken advice as to whether or not Alexander Ewing should be added as a party to the application and explained that she did not wish to add Alexander Ewing as a party to the application.

7.2.3 Mrs Brandt also confirmed that the only section 14(3) notice that had been issued was provided with the application. It was dated 28th March 2022 and named Mrs Maura Ewing as Landlord. No section 14(3) Notice had been addressed to Mr Alexander Ewing as Landlord.

8 Decision

8.1 Mrs Taylor reminded the parties that the Tribunal had made a determination under application **FTS/HPC/RP/22/1503** with regards to the identity of the Landlord, which was in the following terms:

'Clarification of who the landlords are.

The Tribunal invited both parties to advise the Tribunal if they consider both the Respondents to be landlords of the Property:

(i) *Mrs Brandt advised as follows:*

She was advised by Mr Ewing that Mrs Ewing had nothing to do with the Property and he was the sole Landlord. However early dealings had been with Mrs Ewing. She doesn't know whether or not Mr and Mrs Ewing are joint landlords.

(ii) *Mr and Mrs Ewing advised as follows:*

They had been preparing the Property for sale. Mrs Brandt had been sleeping on a neighbour's couch when their neighbour suggested that Mr and Mrs Ewing could lease the Property to Mrs Brandt. Mrs Ewing had asked Mrs Brandt to pay a sum of money in return for which they would hold the Property for her. The Property is owned solely by Mr Ewing. Mr Ewing is the registered landlord. The rent is paid into Mr and Mrs Ewing's joint account. Mr Ewing is the sole Landlord.

(iii) *The Tribunal considered the parties' representations. They considered the deposit receipt, which was in the following terms:*

'Landlord

Maura Ewing

12 Caddlehill street

Greenock

PA168TU

Deposit for holding:

Accommodation: 1, The Water House, Old Largs Road, Greenock, PA15 9GR

Tenant: Miss Michelle Tanjia, 10/12 The Harbourside, Inverkip

Received from Michelle Tanjia the sum of £800 in respect of a deposit to reserve the property at 1 The Waterhouse, Old Largs Road, Greenock on today 10th November 2021 and until 3rd January 2022. If within this time period either party retracts from the contract set the other party will hold the £800. Having reviewed on January 3rd 2022 rent will be set at £850 per month and council tax will start commencing on this date or whenever the tenant receives the keys and takes residence if this being earlier than 3rd January 2022. When tenant takes residence a further contract will be set between landlord and tenant.

Regards

Maura Ewing'

It was agreed that Michelle Tanja and Michelle Brandt were the same person.

Considering that (i) Mr Ewing was the heritable proprietor on the Property in terms of Land Certificate REN121846 (ii) Mr Ewing is the registered landlord and (iii) the rent is paid into an account in the joint names of Mr and Mrs Ewing, Mr Ewing is a landlord of the Property.

Considering that (i) the holding deposit refers to Mrs Ewing as being landlord and (ii) the rent is paid into an account in the joint names of Mr and Mrs Ewing, Mrs Ewing is also a landlord of the Property.

Therefore, the Tribunal determined that both Mr and Mrs Ewing are joint landlords of the Property.'

8.2 Mrs Taylor also reminded the parties that section 14 of the Private Housing (Tenancies) (Scotland) Act 2016 is in the following terms:

'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.

(2)Either the tenant or the landlord under a private residential tenancy may apply to the First-tier Tribunal asking it to draw up the terms of the tenancy under section 15 if

the tenant or landlord thinks that the written terms of the tenancy purport to displace a statutory term in an unlawful manner.

(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.

(4)For the purpose of subsection (2), written terms of a tenancy purport to displace a statutory term in an unlawful manner if—

(a)the statutory term is not included in the written terms of the tenancy but is a term of the tenancy because regulations under section 7(3)(a) do not provide otherwise, or

(b)the statutory term, as expressed in the written terms of the tenancy, bears to be subject to a modification which is not permitted by regulations under section 7(3)(b).

(5)In a case where two or more persons jointly are the tenant under a tenancy, references to the tenant in this section are to any one of those persons.

(6)In a case where two or more persons jointly are the landlord under a tenancy, references to the landlord in this section are to any one of those persons.’

Section 14(3) provides that the tenant may not make an application to the Tribunal to draw up terms of the tenancy unless the tenant has given the landlord notice of the tenant’s intention to make the application.

Mrs Brandt had provided the Tribunal with a copy of the Tenant’s Notice to a Landlord under section 14(3) of the Private Housing (Tenancies)(Scotland) Act 2016 dated 28th March 2022. The Notice was addressed to Mrs Maura Ewing as Landlord. No section 14(3) Notice was provided addressed to Mr Alexander Ewing. No such notice had been sent to Mr Alexander Ewing.

As Mr Alexander Ewing and Mrs Maura Ewing are joint landlords of the Property the Tribunal were unable to progress the application as (First) the application had not been amended to include Mr Alexander Ewing as a Respondent and (Second) no notice under section 14(3) of the Private Housing (Tenancies)(Scotland) Act 2016 addressed to Mr Ewing as Landlord had been sent to Mr Ewing.

Consequently, the Tribunal dismissed the application.

9. 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.

Jacqueline Taylor

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..... **Legal Member**

13th October 2022