



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 14 of the Private Housing (Tenancies)(Scotland) Act 2016

Chamber Ref: FTS/HPC/TE/21/2167

Re: Property at Flat 0/1, 363 Calder Street, Glasgow, G42 7NT (“the Property”)

Parties:

Ms Roxanne Purcell, Flat 0/1, 363 Calder Street, Glasgow, G42 7NT (“the Applicant”)

Miss Yvonne McBurney, 14 Laignmuir Street, Uddingston, Glasgow, G71 7JX (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that (1) the Respondent has failed to provide the Applicant with a document that sets out all of the terms of the tenancy and failed to provide such a document to the Applicant and (2) that the Tribunal should draw up a document which accurately reflects all of the terms of the tenancy.

Background

1. By application dated 6 September 2021 the Applicant’s representatives Govanhill Law Centre, Glasgow applied to the Tribunal requesting that the Tribunal draw up the terms of the tenancy between the parties in terms of Section 14 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”). The Applicant’s representatives submitted a copy of the notification sent to the Respondent in terms of Section 14(3) of the 2016 Act together with proof of postage, a statement of the terms agreed verbally between the parties and copy correspondence exchanged between the parties.

2. By notice of Acceptance dated 23 September 2021 a legal member of the Tribunal with delegated powers accepted the application and a hearing was assigned.
3. By email dated 18 October the Respondent submitted written representations in response to the application.

The Hearing

4. A hearing was held by teleconference on 3 November 2021. Both parties attended in person. The Applicant was represented by Ms Claire Cochrane of Govanhill Law Centre.
5. It was agreed between the parties that there was no written tenancy agreement although the Applicant thought that she had signed some document at the start of the tenancy but had never been provided with a copy and could not recall what she had signed.
6. It was suggested by Ms Cochrane that the rent had originally been agreed at £625.00 per month and that this had been paid from the commencement of the tenancy on 30 August 2019 until 5 August 2021 when by agreement it had been reduced to £425.00 per month. Ms Cochrane said she had been advised by the Applicant that during the period when the rent was £625.00 the Applicant had transferred £425.00 from her bank account to the Respondent and paid the remaining £200.00 in cash. She said the Applicant was unable to provide vouching for the cash payments.
7. The Respondent's position was that the Applicant had only ever paid £425.00 per month in respect of the rent. The Respondent went on to say that she had not drawn up a tenancy agreement as she had only intended that the Applicant stay in her property on a short-term basis because she had nowhere to go and was being evicted from her home and she was a friend. The Respondent said she had never wanted to become a landlord.
8. The Tribunal tried to ascertain why after receiving the formal notification from the Applicant's solicitor in July 2021 she had not taken the opportunity then to prepare a tenancy agreement. The Respondent said that she had through her solicitor provided terms of agreement but these had been declined by the Applicant.
9. For the Applicant Ms Cochrane advised the Tribunal that no tenancy agreement had been prepared but terms had been offered but these were conditional on the Applicant agreeing to leave the property and that had not been acceptable. The Applicant confirmed that was indeed the case.
10. The Tribunal queried with the parties if, in the event of it being decided that it should draw up terms, there were any variations from the Scottish Government Model Private Residential Tenancy Agreement that should be included. The parties indicated there were none. The Applicant suggested that any

communication between the parties should be by post and the Respondent suggested communication should be either by email or by post or personal service.

Findings in Fact

11. The parties entered into a Private Residential Tenancy Agreement that commenced on 30 August 2019 at a rent of £425.00 per calendar month.
12. The Respondent did not Register as a Landlord.
13. The Respondent did not provide the Applicant with a Tenancy agreement or a document setting out all the terms of the tenancy.
14. By notification dated 9 July 2021 the Applicant's representatives gave notice to the Respondent of their intention to apply to the First-tier Tribunal.

Reasons for Decision

15. The Tribunal was satisfied from the information provided by the parties that there was a private residential tenancy in place and it was not disputed that this was the case. Although the Respondent may have thought that the Applicant's occupancy of the property was only to be short-term (and this was disputed by the Applicant) that in no way absolved her from her responsibilities under Section 10 of the 2016 Act.
16. The Tribunal was not persuaded that the initial rent was agreed at £625.00 per month. Although there may have been some arrangement between the parties with regards to the rent to be paid the Applicant was unable to provide any documentary evidence to support her contention that she paid £200.00 in cash each month to the Respondent between 30 August 2019 and 5 August 2021. In the balance of probabilities, the Tribunal concluded that it was more likely than not that the agreed rent was £425.00 per month.
17. The Tribunal concluded that the Respondent had been given an opportunity by the Applicant's representatives to provide the necessary documentation prior to the application being made to the Tribunal but had failed to do so. It appeared to the Tribunal that any offer to provide written terms had been subject to a condition that the Applicant vacated the property. The Tribunal did not consider that was reasonable. The Tribunal therefore determined that it should draw up terms.

Decision

The Tribunal having carefully considered the submissions made on behalf of both parties together with the written representations determined that (1) the Respondent has failed to provide the Applicant with a document that sets out all of the terms of the tenancy and failed to provide such a document to the Applicant and (2) that the

Tribunal should draw up a document which accurately reflects all of the terms of the tenancy.

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

G Harding

**Graham Harding
Legal Member/Chair**

**3 November 2021
Date**