



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 11 and 16 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/TE/23/0898

Re: Property at Flat 3/1 (or Flat 27) 318 Albert Drive, Glasgow, G41 5EB (“the Property”)

Parties:

Mr Konstantinos Silikoglou, 2/3 712 Dumbarton Road, Glasgow, G11 6RB (“the Applicant”)

Mrs Rona Allanach, Dunallan, St Evox, St Quivox, Ayr, KA6 5HJ (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and David Fotheringham (Ordinary Member)

Background

The Applicant lodged an application on 18th March 2023 under Rule 107 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) seeking sanction of the Applicant for not providing the prescribed information in terms of section 11 of the Private Housing (Tenancies) (Scotland) Act 2016.

Lodged with the Application were:

1. The written agreement between the parties dated 10th December 2020 and headed “Accommodation Agreement for double room” with a rent of £599 per month and commencing on 7th January 2021 for 6 months
2. Notification to Landlord form dated 5th February 2023
3. Email from Applicant to respondent dated 5th February 2023 attaching a copy of item 2

The Application was served on the Respondent by Sheriff Officer on 17th May 2023.

Case Management Discussion

The Case Management Discussion (“CMD”) took place by teleconference. The Applicant represented himself. The Respondent did not attend and was represented by Mr Fraser of Wallace Hodge, Solicitors.

The Chairperson confirmed the purposes of a CMD in terms of Rule 17 of the Rules.

The Applicant confirmed the nature of his application. He said that he had lived in the flat from 7th January 2021 and left on 6th February 2023. He had signed an agreement for room rental but considered that he should have had a tenancy agreement.

Mr Fraser made a motion that the Chairperson should not hear the case as she had previously made a decision in a separate case between the parties and the decision had a bearing on this case. This motion was refused.

Mr Fraser said that he had lodged written submissions. He read those out and explained them.

His first point was that the application was irrelevant as the tenancy was not a Private Residential Tenancy.

His second point was that the application was incompetent as in terms of section 16(3)(a) of the 2016 Act the application had to be made during the course of the tenancy in question. The tenancy had come to an end on 6th February 2023 and the application was not made to the Tribunal until 18th March 2023.

The Applicant was asked for his position on this. He said that he had not been aware of the time limit.

The Tribunal adjourned for a discussion. It concluded that Mr Fraser’s second point was valid that the application was incompetent. There was therefore no need to consider his first point.

Findings in Fact

1. The parties entered in to an agreement for rent of the property;
2. The occupation by the applicant began on 7th January 2021 and ended on 6th February 2023;
3. The Applicant’s application was lodged at the Tribunal on 18th March 2023.

Reasons for Decision

Section 16 of the 2016 Act is as follows:

(1) On an application by the tenant under a private residential tenancy, the First-tier Tribunal may make an order under subsection (2) where—

(a) the landlord has failed to perform a duty arising by virtue of section 10 or 11 to provide the tenant with information,

(b) at the time the First-tier Tribunal considers the application, the landlord has still not provided the tenant with the information, and

(c) the landlord does not have a reasonable excuse for failing to perform the duty.

(2) An order under this subsection is one requiring the landlord to pay the person who made the application an amount not exceeding—

(a) three months' rent, if the order is in respect of a failure by the landlord to perform—

(i) a duty arising by virtue of section 10, or

(ii) one or more duties arising by virtue of section 11,

(b) six months' rent, if the order is in respect of a failure by the landlord to perform—

(i) a duty arising by virtue of section 10, and

(ii) one or more duties arising by virtue of section 11.

(3) An application under subsection (1)—

(a) may be made only during the course of the tenancy in question,

(b) where the application relates to a failure to perform a duty arising by virtue of section 10, may be made only as part of an application under section 14(1), and

(c) may not be made 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) If—

(a) an application has been made under subsection (1) in respect of a failure to perform a duty arising by virtue of section 11, and

(b) at the time the application was made, an application could have been made in respect of a failure to perform another duty arising by virtue of section 11,

no application may be made in respect of that other duty.

(5) Where two or more persons jointly are the landlord under the tenancy in question, an order by the First-tier Tribunal under subsection (2) may—

(a) be made against all, some or only one of the joint landlords,

(b)state that each person against whom the order is made is liable to pay a specified amount, but the cumulative total of each of the specified amounts must not exceed the maximum set by subsection (2),

(c)state that each person against whom the order is made is jointly and severally liable for the whole amount to be paid.

(6) 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.

(7) In subsection (2), “rent” means—

(a)the amount that was payable in rent under the tenancy at the time that notice of the application was given to the landlord, and

(b)in a case where two or more persons jointly are the tenant under the tenancy, the amount mentioned in paragraph (a) divided by the number of those persons.

Section 16 (3)(a) provides that an application may only be made during the course of the tenancy. The tenancy had come to an end by the time that this application was made. It is therefore incompetent.

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.

A. Kelly

15 June 2023

Legal Member/Chair

Date