Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/21/2932

Re: Property at Flat 0/1, 5 Belmont Road, Paisley, PA3 4TT ("the Property")

Parties:

Ms Anne-Laure Grimaud, Unit 27261, PO Box 26965, Glasgow, G1 9BW ("the Applicant")

Mr Robert Burns, 17 Dalskeith Crescent, Paisley, PA3 1AJ ("the Respondent")

Tribunal Members:

Nairn Young (Legal Member)

Decision (in absence of the Applicant)

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

- Background

This is an application for an order for payment of an amount paid by the Applicant to the Respondent as a deposit in terms of a private residential tenancy at the Property. It called for a case management discussion ('CMD') at 2pm on 29 March 2022, by teleconference. The Applicant did not call in to the conference and was not represented. The Respondent was represented on the call by Ms Michelle Paton.

The commencement of the CMD was delayed by 10 minutes to allow for any technical difficulty the Applicant may have been experiencing, but she did not make contact.

Notice of the CMD was sent to the Applicant on 14 February 2022. The Tribunal therefore considered that she had chosen not to attend and that it was in the interests of justice to proceed to consider the application in her absence.

- Findings in Fact

The following facts are discernible from the documents sent in support of the application by the Applicant:

1. The Applicant entered into a private residential tenancy jointly with another party in relation to the Property, in terms of which the Respondent is the landlord.

2. In terms of that agreement, a deposit of £350 was paid to the Respondent by the Applicant on 13 January 2018.

3. The deposit was paid to an approved scheme on 18 January 2018.

4. On 9 January 2019, the Applicant purported to send a notice to leave to the Respondent, indicating that her joint tenant would remain in the Property, but that she would not, as of 14 February 2019.

5. That notice also stated, "As … the current joint tenant is willing to take over the tenancy as a sole tenant, I agree for the remaining deposit to be transferred to his name."

6. At the time the notice was served, the full deposit remained held by the approved scheme.

- Reasons for Decision

7. It is not immediately clear what the legal effect of the 'notice to leave' served by the Applicant was. The law does not allow a joint tenant to terminate his or

her interest in a private residential tenancy unilaterally; notice to leave must be served by all tenants to bring the tenancy to an end. Nonetheless, there may be an argument in this case that the notice has had the effect of assigning the Applicant's interest in the tenancy, especially given what would appear to be the acquiescence of her joint tenant and the landlord to that state of affairs.

8. It was not however necessary to cavass that issue in this application. To the extent that the notice had the effect of assigning the Applicant's interest, it was also clear that any right to the remaining deposit was to be transferred to the joint tenant. It is therefore either the case that the Applicant remains a joint tenant, with no right to access the deposit for that reason; or that she has no right to access the deposit because she has assigned this to the joint tenant. In either case, she has no right to the deposit at this stage and the application falls to be refused.

- Decision

Application refused.

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.

Nairn Young   **29 March 2022**
_____   _____
Legal Member/Chair   **Date**