



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 (“the 2016 Act”)

Chamber Ref: FTS/HPC/CV/21/3117

Re: Property at 11 Hamilton Wynd, Edinburgh, EH6 4EH (“the Property”)

Parties:

Mr Mamadou Diop, Flat 35A, Allerton House, Provost Estate, London, N1 7QX (“the Applicant”)

Ms Ashley Liu, 87 Moredun Park Gardebs, Edinburgh, EH17 7LQ (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Applicant)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £353.76 should be made in favour of the Applicant.

Background

1. The Applicant seeks a payment order in relation to a tenancy deposit. Two related applications were also submitted to the Tribunal under Chamber references PR/21/3116 and PR/21/3115. Various documents were lodged in support of the applications including a copy private residential tenancy agreement, Notice to Leave, emails from the three Tenancy Deposit Schemes and copies of emails between the parties.
2. The parties were notified that a case management discussion (“CMD”) would take place by telephone conference call on 29 March 2022 at 10am. They were provided with the telephone number, passcode and information about how to join the call. Prior to the CMD the Respondent lodged written submissions and documents. The CMD took place by telephone conference call on 29 March 2022 at 10am. The Respondent participated. The Applicant did not participate. The Legal Member advised the Respondent that the Tribunal Clerk had

contacted the Applicant. He was travelling and was unable to dial into the conference call. He thought that the Tribunal would call him. He requested a postponement of the CMD. Having regard to the overriding objectives of the Tribunal, the Legal Member determined that it would be in the interests of justice to postpone the CMD to another date so that the Applicant could arrange to participate.

3. The parties were advised that a CMD would take place on 24 May 2022. At the request of the Respondent, it was postponed to 1 September 2022 and then again to 15 September 2022. The CMD took place on 15 September 2022 at 2pm. The Applicant participated. The Respondent was represented by her mother, Ms Lui, as the Respondent was unavailable
4. At the CMD the Legal Member noted that the Respondent's submissions included a breakdown of deductions she had made from the deposit. These comprised £260.20 for the Applicant's share of a BULB electricity bill (copy bill provided), £66 for cleaning (photographs and invoice provided), £128 for rent due from 21 to 29 November 2021 and £33.85, the estimated cost of electricity for the last 8 days of the tenancy which were not included in the bill. The total was £488.05, leaving no sums to be repaid from the deposit of £480. Mr Diop said that he did not have a contract with BULB and cannot understand why the bill would be addressed to him at his current address. He did not agree to the account being in his name and said that correspondence arrived at the property addressed to the Respondent and former tenants. When asked if he had paid for electricity during his occupancy of the property, he said that it might have been included in the rent, should have been divided between all the tenants and that there was solar power, so no bills. Ms Lui was asked whether Respondent paid the electricity bill lodged by her. She said that she thought that she must have. Mr Diop advised the Legal Member that he did not accept any of the charges/deductions applied by the Respondent. In relation to the £128 he said that he could not recall whether he had paid the last week's rent.
5. The Legal Member determined that the application should proceed to a hearing and issued a direction to the parties for the production of information and documents. The parties were notified that the hearing would take place by telephone conference call on 29 November 2022 at 10am.
6. Prior to the hearing both parties lodged written representations and documents. The Applicant provided some email correspondence between himself and the Respondent and a letter from the Local Authority in relation to a complaint/enquiry he had submitted. On 26 November 2022 he lodged a submission which stated that he had paid the rent for November. He also stated that he had experienced emotional distress, that there was no lock on his bedroom door or the bathroom door at the property, that the Respondent was not fit to be a landlord and was targeting foreign tenants to extort money from them. He added that he was requesting a copy of the BULB bill, that he had corresponded with the Local Authority and that the Landlord had failed to

arrange a cleaner for the property. He also stated that there were often strangers in the house, that there were two tenants there when he moved out, that the heating did not work, that he had been evicted during the pandemic and had to move back to London as he could not obtain accommodation in Edinburgh at short notice. The Respondent stated that she had arranged for the BULB account to be put into the Applicant's name, as he had requested this. Mr Diop had been aware of this prior to and after the start of the tenancy. Although Mr Diop denied having received any mail from BULB, they said that they had corresponded with him. As he did not pay any utility bills during the tenancy, the whole sum specified is due. The lease clearly states that Mr Diop is responsible for utility bills. Ms Lui said that she paid the BULB bill, as they were chasing it. She has been unable to get a final bill from BULB. Mr Diop is also liable for the additional sum of £33.85 as there were 8 days not included in the bill. He is also liable for the cleaning bill of £66 for his room and the communal areas. He did not pay rent for the last 8 days of the tenancy, therefore £128 is due. Not long after he moved in, there were issues with his heating, and he refused to pay any bills. She felt that the deposit would cover these as the consumption was high. She provided some information about the complaints made about the heater and the steps she took to address the matter.

7. On 28 November 2022, the Applicant notified the Tribunal that he was having problems with his phone. He did not request a postponement of the hearing. Prior to the hearing the Applicant was notified that he could dial in early to the call to check that he was able to join the call. He was also notified that the hearing would proceed in his absence if he did not request a postponement. No further communication was received.
8. The Hearing took place by telephone conference call in relation to the application and the two related applications. The Respondent participated. The Applicant did not participate.

The Hearing

9. Ms Lui told the Tribunal that she purchased the property in 2019 and lived there for a while. She then decided to convert the mortgage to a buy to let mortgage. Mr Diop was the first tenant at the property, with another (the second tenant) moving in on 26 September. After she moved out on 31 October 2021, a friend of a friend (the third tenant) moved in for an agreed short term let until 9 December 2021. The second tenant was not asked to provide a deposit. Mr Diop was asked for a deposit because he insisted on a formal tenancy agreement. The second tenant did not want this. The third tenant provided a very small deposit. This was not lodged in a scheme and was returned to him in full at the end of the tenancy.
10. Ms Lui said that she only owns one property, the subject of the applications. There are no tenants in the property at the present time. It is a three-bedroom house, although one of the bedrooms is really a box room. Mr Diop occupied a full-size double bedroom upstairs. The house has been unoccupied since the

tenants moved out.

11. In response to questions from the Tribunal. Ms Lui said that the Applicant did not pay rent for the last 8 days of the tenancy. She also stated that she contacted BULB and arranged for the account to be put into the Applicant's name. She told him that this would be the case because he was the lead tenant. He agreed but said that he was not sure how to go about it, so she offered to contact BULB. They were the existing electricity supplier. Before Mr Diop moved in, the account was in the name of her ex-partner. He did not reside at the property, but she had an unpredictable income at the time. During her communications with BULB, they told her that there had been issues with Mr Diop's account for his London home. She said that she did not provide BULB with his London address and could not explain how they got this, as she didn't know it. When she contacted them and was told that the bill was unpaid, she asked for a copy and was sent it by email. The other tenants paid their share of the bill. She had worked out the daily charge and apportioned the bill among the tenants. There was a period when Mr Diop was at the property alone and liable for the whole cost. The additional 8 days, not included in the bill, were calculated by her, based on the same daily rate. She has no evidence to support this sum. The Tribunal noted that the BULB bill is based on an estimated meter reading. Ms Lui said that she had provided BULB with a reading for the day that Mr Diop moved in but not when he moved out.
12. When asked about the cleaning bill, Ms Lui said that the property had been left in a dirty condition. The Tribunal noted that the cleaning bill appeared to relate to both the bedroom and the communal areas, although the property was occupied by another tenant when Mr Diop moved out. Most of the photographs related to these areas – the kitchen and bathroom. Ms Lui said that when the second tenant moved out, she had cleaned the communal areas

Findings in Fact

13. The Respondent is the owner and former landlord of the property
14. The Applicant paid a deposit of £480 prior to the start of the tenancy on 21 August 2021.
15. The tenancy terminated on 29 November 2021, following service of a Notice to Leave on the Applicant.
16. The Applicant did not pay rent for the last eight days of the tenancy, the 21 to 29 November 2021.
17. The Applicant did not pay for electricity used by him at the property.
18. In terms of the tenancy agreement the Applicant was liable for electricity bills at the property. The Applicant was aware of this.
19. There were other occupants at the property during the Applicant's tenancy. One of the occupants, a joint tenant was still in occupation when the Applicant

moved out.

20. The Respondent paid the sum of £393.48 to BULB on 8 March 2022.

21. On 7 December 2021, BULB issued a bill for £393.48 to the Applicant at his current address.

Reasons for Decision

22. The Applicant did not participate in the hearing. Although he sent in written submissions and some documents, many of these appeared to be irrelevant. He did not address all issues identified at the CMD or provide a full response to the direction issued by the Tribunal.

Rent for the period 21 November 2021 to 29 November 2021 – £128

23. At the CMD, the Applicant said that he could not remember whether he had paid the rent for this period. The Tribunal issued a direction for him to provide evidence that it had been paid. He did not do so, although he stated in his submission that “the November rent” had been paid.

24. The Tribunal notes that the tenancy started on 21 August 2021, with rent of £480 payable in advance on 21st of each month. The Respondent confirmed that the rent due on 21 October, for the period to 20 November, had been paid by the Applicant. She stated that the rent due from 21 November until the end of the tenancy on 29 November 2021 was not paid. In the absence of evidence that the Applicant paid the rent due for this period, the Tribunal is satisfied that the Respondent was entitled to deduct this sum from the deposit. However, as the daily rate was £15.78, the deduction which should have been applied is £126.24

Cleaning - £66

25. The Respondent provided an invoice for the cleaning costs. This is dated 3 December 2021. Although the company name (Neat Scotland Limited) is on the invoice, the sender's details are redacted. It is not clear why this was required. The invoice provides no details about the work, which was carried out, although the Respondent's submissions refer to both the Applicant's bedroom and the communal areas. There are photographs. Most of these appear to show the kitchen and bathroom. The Respondent told the Tribunal that the bedroom had been left in a dirty condition but did not provide clear evidence of this.

26. When the Applicant moved out of the property there was at least one tenant/occupier still in residence. In his submissions, the Applicant claims that there were two but did not provide evidence of this. The kitchen and bathroom, the communal areas, were shared.

27. The Respondent appears to hold the Applicant liable for the whole cost of cleaning these areas, although the property was still occupied, and no evidence was provided that he had caused or contributed to the mess. Usually, joint tenants will move in and out of a property at the same time. Any cleaning costs would be shared between them. The Tribunal is not persuaded that the Respondent is entitled to charge the Applicant for the cleaning of communal areas which took place after he moved out, when the property was still occupied. The Tribunal is also not persuaded that the Respondent has established that the bedroom required to be professionally cleaned.
28. The Tribunal is not satisfied that the Respondent was entitled to deduct the sum of £66 from the deposit.

Electricity

29. The Tribunal had some difficulty with the Respondent's evidence in relation to the electricity costs at the property. The following issues were noted:-
- (a) The Applicant was told that the electricity account was to be in his sole name although other tenants would be living at the property.
 - (b) The Applicant was not consulted about the other tenants and had no control over who else would be living at the property.
 - (c) The Respondent did not explain to the Applicant how she would ensure that the other tenants paid their share of the bills.
 - (d) It is not clear how the electricity supplier obtained the Applicant's current address.
 - (e) The Respondent was entitled to notify the supplier of the name of her tenant and the date when he moved in. However, the supplier should not have provided her with a copy of a bill addressed to the Applicant at his current address.
 - (f) It is not clear why the Respondent paid the bill. It is addressed to the Applicant, so she was under no obligation to do so.
 - (g) The Respondent did not provide evidence that the other tenants paid a share of the bill.
 - (h) The bill is based on an estimated final meter reading. Although the Applicant did not move out until 29 November 2021, the bill only goes up to 21 November.
 - (i) The Respondent's calculations assume that the same amount of electricity was used every day during the tenancy. It therefore does not take account of the fact that the Applicant initially lived in the property alone, in the summer, when usage might have been less than in November when there were two occupants.

30. The Applicant signed a tenancy agreement which stated that he would be responsible for utility costs. There are messages between the parties where this is acknowledged. However, it is clear from the documents lodged, that the Applicant had had a change of heart about putting the account in his name. He sought advice about it. As he did not give evidence, his reasons for this were not established. However, it is likely that he had concerns about other occupants living in the property who were not named on the account. The Applicant had no connection with these individuals and had not agreed to a joint tenancy with them. The situation would not have arisen if the Respondent had signed all three tenants up to a valid joint private residential tenancy agreement which complied with current legislation.
31. The Tribunal is satisfied that the Applicant lived in the property for three months and did not pay for electricity during this period, although he had agreed to do so. However, for the reasons outlined in paragraphs 29 and 30, the Tribunal is not satisfied that the Respondent was entitled (or obliged) to pay the bill or that her calculation of the sum due by the Applicant is accurate. The Tribunal is therefore satisfied that the Respondent was not entitled to deduct the sums of £260.20 and £33.85 from the deposit.
32. The Tribunal concludes that the Respondent has only established that she was entitled to deduct the sum of £126.24 from the deposit, the Applicant is entitled to a payment order for the sum of £353.76.

Decision

33. The Tribunal determines that an order for payment of the sum of £353.76 should be made in favour of the Applicant.

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.

Josephine Bonnar

