



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 70(1) of the Private Housing Tenancies (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/23/0965**

**Re: Property at Ground Floor Left 59 Erskine Street, Aberdeen, AB24 3NR (“the Property”)**

**Parties:**

**Mrs Blessing Mbah, 164 Morrison Drive, Aberdeen, AB10 7HD (“the Applicant”)**

**GK Property Management, 605 King Street, Aberdeen, AB24 1SA (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Mike Scott (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order in the sum of One hundred and sixty pounds (£160) Sterling**

**Background**

- 1** By application to the Tribunal dated 24 March 2023 the Applicant sought an order against the Respondent for payment in the sum of £160, being cleaning costs in the sum of £60 and legal fees in the sum of £100, that had been deducted from her tenancy deposit. In support of the application the Applicant provided a copy of the tenancy agreement between the parties and copy correspondence between Shelter Scotland on the Applicant’s behalf and the Respondent. The Applicant also submitted copy Whatsapp messages between herself and the Respondent, which included a statement from the Respondent detailing the deductions made from the deposit.
- 2** By Notice of Acceptance of Application the Legal Member with delegated powers from the Chamber President concluded that there were no grounds upon which to reject the application and referred the application to a Case Management Discussion. A copy of the application paperwork together with notification of the

date and time of the Case Management Discussion was served upon the Respondent by Sheriff Officers on 4 May 2023.

- 3 The Tribunal subsequently received written representations from the Respondent on 23 May 2023 and 26 May 2023. In summary the Respondent submitted that no tenancy deposit had been paid by the Respondent, however she had been asked under the terms of the tenancy agreement to pay two months rent upfront. A rent increase notice had been served on the Applicant in September 2022 however she had not taken any heed of this and had been looking for another property. The Applicant had been informed by the Respondent that she would be liable for any legal bills as a result of her casual attitude. The Applicant had failed to pay the increased rent and the Respondent had ceased communication with her due to her erratic behaviour. It was clearly mentioned in the tenancy agreement that the flat would be professionally cleaned at the start of the tenancy and it would have to be returned in the same state. The Respondent gave a summary of the issues they had experienced with the Applicant during the term of the tenancy and stated that she was a habitual liar who did not understand the terms of the lease, despite the Respondent's efforts to explain it to her. In support of their representations the Respondent provided a copy letter from their lender regarding mortgage rates, a copy letter from the Respondent to the Applicant dated 24 October 2022 intimating a rent increase and a copy letter from Anderson Bain solicitors to the Respondent dated 27 January 2023 regarding the rent increase.
- 4 The Applicant submitted further written representations on 31 May 2023, providing copies of bank transactions that purported to show payments being made to the Respondent.

### **The Case Management Discussions**

- 5 The first Case Management Discussion was adjourned due to concerns from the Tribunal about conducting same via teleconference. The second Case Management Discussion therefore took place in person in Aberdeen at the Tribunals Centre. The Applicant was in attendance. The Respondent was represented by its sole Director, Gautam Kumar.
- 6 The Tribunal explained the purpose of the Case Management Discussion and asked parties to address them on their respective positions regarding the application. For the avoidance of doubt the following is a summary of the relevant matters that were discussed, and not a verbatim account of what was said by the parties.
- 7 The Applicant confirmed that she sought the sum of £160, being the cleaning costs and legal fees that had been withheld from the Respondent. She had cleaned the property before leaving the tenancy. Mr Kumar had attended the property and had told her it was fine and she would get her deposit back. However she understood his father had then stepped in and had told Mr Kumar not to give her the full deposit back. With regard to the legal fees, the Applicant did not understand why these were due. She had been told by Mr Kumar shortly before leaving the property that she would be responsible for any legal bills and

was advised in January that the rent was increasing. However she had not received the letter from the Respondent regarding the rent increase that they had purported to send by post in October 2022. The Applicant confirmed that she had left the property on 14<sup>th</sup> February 2023.

- 8 Mr Kumar addressed the Tribunal. He disagreed that the property had been left in a clean condition. He had shown it to a prospective tenant following the Applicant's departure and said tenant was not happy with the condition of the property, which led to the Respondent engaging a professional cleaner. Mr Kumar confirmed that when he visited the property it looked okay in terms of cleanliness but the new tenant had a different perspective and wanted the property to be immaculate. An end of tenancy clean would be required if the property was not properly cleaned. Mr Kumar explained that the Applicant had taken over the property from a friend and he was not aware of its condition when the Applicant moved in. He had to go to the property to arrange for the Applicant to sign the lease but she was in a rush and signed it without reading it properly. It was her responsibility to ensure she understood the terms of the lease, not the landlords. In response to questions from the Tribunal Mr Kumar confirmed that the property had not been professionally cleaned before the Applicant moved in as she had taken over the tenancy from a friend.
- 9 Mr Kumar then addressed the legal fees. He confirmed that the rent increase was due to take effect in January 2023, as per the letter he had sent to the Applicant on 24 October 2022. However the Applicant didn't increase her payments. He then had to contact a solicitor to ask them to write to the Applicant. Mr Kumar felt the solicitor's letter had prompted the Applicant to vacate the property.

### **Findings in Fact**

- 10 The Applicant and Respondent entered into a tenancy agreement which commenced on 20 June 2022.
- 11 In terms of Clause 3 of the said tenancy agreement the parties agreed that any notice required under the terms of the tenancy agreement would be communicated via email.
- 12 In terms of Clause 9 of the said tenancy agreement, the Respondent agreed that any rent increase notice must be sent via the communication method agreed under Clause 3 and be in the form prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 13 On 24 October 2022 the Respondent purported to send a letter to the Applicant advising that her rent would be increased from £425 to £475 from 24 January 2023.

- 14 The letter was not in the form prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017. The letter was not sent by email.
- 15 On 27 January 2023 the Respondent's solicitor wrote to the Applicant advising her of the rent increase and the Respondent's intention to pursue repossession of the property and any outstanding funds in the event that payment of the increased rent was not made.
- 16 The said tenancy agreement does not make provision for the recovery of legal costs by the Respondent.
- 17 Clause 36 of the tenancy agreement states that the property would be professionally cleaned prior to the Applicant taking up occupation and should be left in the same condition at the end of the tenancy.
- 18 The property was not professionally cleaned prior to the Applicant taking up occupation.
- 19 The Applicant cleaned the property prior to vacating on 14<sup>th</sup> February 2023. The Respondent arranged for the property to then be professionally cleaned following comments from a prospective tenant.

### **Reasons for Decision**

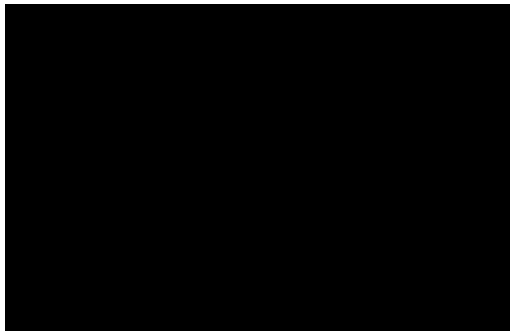
- 20 The Tribunal was satisfied that it could make a decision on the application following the Case Management Discussion, and that to do so would not be prejudicial to the parties. There were no issues in dispute between the parties on the substantive facts that would require a hearing to be fixed.
- 21 With regard to the cleaning costs, the Tribunal accepted based on the submissions from both parties at the Case Management Discussion that the property had been cleaned by the Applicant at the end of the tenancy. Mr Kumar had stated that in his view the property looked okay when he viewed it, however it was only upon noting comments from a prospective tenant that he took the step to have it professionally cleaned. Whilst it was noted that the tenancy agreement states that the property will be professionally cleaned at the start of the tenancy, Mr Kumar had conceded that in the Applicant's case this had not transpired due to the fact that she had taken on the tenancy from a friend. The Tribunal could therefore see no justification for the Respondent charging a cleaning fee, on the basis that no professional clean had been carried out at the start of the tenancy, and the Tribunal accepted based on the submissions from the parties that the Applicant had left the property in a reasonable condition following her departure. By requiring the Applicant to pay for a professional clean, the Respondent was benefitting from the property being in a superior condition than what was leased to the Applicant when she took up the tenancy.

**22** With regard to the legal costs, again the Tribunal could see no justification for recharging these to the Applicant. The Respondent had purported to send a rent increase notice to the Applicant in October 2022. However there was no evidence that the notice had been sent by email, as was required by Clause 3 of the tenancy agreement. Furthermore, the notice was not in the correct form as required by Clause 9 of the tenancy agreement. It was therefore invalid. Whilst the Respondent is entitled to engage solicitors if that is his want, there was no liability on the Applicant's part to meet the costs of same in the circumstances outlined, and there was in fact no provision in the tenancy agreement which entitled the Respondent to proceed on that basis. The Tribunal therefore concluded that the Applicant was not responsible for the Respondent's legal costs.

**23** The Tribunal therefore determined to make an order against the Respondent in the sum of £160. The decision of the Tribunal was unanimous.

### **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.**



**Legal Member/Chair**

**21 November 2023**

**Date**