



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 of the [Tenancy Deposit Schemes \(Scotland\) Regulations 2011/176](#)

Chamber Ref: FTS/HPC/PR/23/2857

Re: Property at 5 Gallowden Road, Arbroath, DD11 3HL (“the Property”)

Parties:

Miss Lynn Petrie, Mr Daniel Whitley, 82 Nolt Loan Road, Arbroath, DD11 2AA (“the Applicant”)

Miss Fiona Jamieson, Mr Michael Jamieson, Schulstrasse No 1, Uttenreuth, Bavaria 91080, Germany (“the Respondent”)

Tribunal Members:

Mary-Claire Kelly (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to dismiss the application

Background

1. By application received on 18th August 2023 the applicants sought an order for payment in terms of Rule 103 in the sum of £2,850.
2. A separate application seeking an order under for damages on the grounds of unlawful eviction had been lodged by the applicants against the respondents under reference FTS/HPC/PR/23/2856. Both cases were heard together.
3. The applicants lodged the following documents in support of their application:
 - Copy tenancy agreement with a commencement date of 1st March 2017
 - Screenshot showing deposit of £925 held by Safe Deposit Scotland since 1st March 2013
4. The respondent lodged written submissions and the following documents:

- Copy tenancy agreement with a commencement date of 1st March 2013
- Deposit protection certificate showing deposit of £925 paid to Safe Deposit Scotland on 16th April 2013
- Emails from Vista Property letting agents
- Confirmation of Bacs transfer of £925 from Ms Petrie to Vista Property on 8th April 2013

5. A case management discussion “cmd” was assigned for 8th January 2024.

Case management discussion – 8th January 2023 – teleconference

6. All parties were in attendance at the teleconference.

7. At the cmd Ms Petrie gave evidence on behalf of the applicants:

Ms Petrie stated that when the original lease was signed on 1st March 2013 a deposit of £925 was paid to the letting agents as per paragraph 3 of the lease which stated that the deposit was £925. It was not disputed that the deposit was dealt with correctly and deposited in Safe Deposits Scotland’s tenancy deposit scheme at the time the original lease commenced. Ms Petrie stated that a second lease was entered into between parties with a commencement date of 1st March 2017. Vista properties continued to be letting agents when the second lease was signed. The second lease had an increased rent of £950 per month. Clause 3 of the lease states that the deposit was £950 which required to be paid prior to the date of entry. Ms Petrie gave evidence that she and Mr Whitley signed the lease out of hours with the letting agents. She stated that at the point when the lease was signed, Kevin Webster the managing director of the letting agents asked her to provide £25 in cash to cover the increased deposit. Ms Petrie stated that £25 in cash was handed over to the letting agents at that time. She stated that no receipt for the payment was provided and she had no written evidence of the payment. Ms Petrie advised that throughout the duration of the tenancy all other payments to Vista Properties had been made by bank transfer or direct debit. Ms Petrie advised that there had been a further increase in rent to £975 prior to the tenancy terminating. She stated that the letting agents did

not increase the deposit to £975 at that time and the deposit had remained at £950.

8. Mr Whitley stated that his recollection was that £25 in cash was paid to the letting agent when the lease commencing 1st March 2017 was signed. He recalled meeting the letting agent after work and stated that £25 had been paid over upon signing.
9. Mr Jamieson spoke on behalf of both respondents. He stated that the amount of the deposit was £925. He referred to the documents which had been lodged by Vista Properties the letting agents. He stated that Vista Properties had dealt with the administration in relation to the tenancy deposit. The deposit had been placed in a tenancy deposit scheme at the commencement of the original lease. He referred to the email from Kevin Webster, managing director of the letting agents which stated that the lease commencing 1st March 2017 contained a typographic error in the deposit clause. The incorrect amount of £950 had been inserted in error. Mr Webster stated in his email that no additional £25 had been requested or received from the applicants. Mr Jamieson disputed that any additional money had been paid for the deposit since the sum of £925 at the commencement of the tenancy agreement.

Findings in fact

10. The Tribunal made the following findings in fact:
 - a) Parties entered in a lease with a commencement date of 1st March 2013
 - b) The deposit paid in respect of that lease was £925
 - c) The deposit of £925 was lodged in Safe Deposits tenancy deposit scheme on 16th April 2013.
 - d) On 1st March 2017 parties entered into a second written lease with an increased rent of £950.
 - e) The second written lease contained a typographic error as regards the amount of the deposit
 - f) The applicants did not pay an additional £25 deposit upon signing the lease commencing 1st March 2017
 - g) The rent in the property increased to £975 prior to the end of the lease.

Findings in fact and law

11. The Tribunal found in fact and law

- a) The deposit paid by the applicants was £925. The respondents complied with the tenancy deposit regulations by placing the deposit in a tenancy deposit scheme as required by regulation 3.
- b) There has been no breach of the tenancy deposit regulations and accordingly the Tribunal does not require to consider the level of any award under regulation 10.

Reasons for the decision

12. There was a clear dispute between parties as to the facts in relation to the level of the tenancy deposit. It was not disputed that under the original lease a deposit of £925 had been paid and had been dealt with in compliance with the tenancy deposit regulations. The dispute was whether an additional sum of £25 had been taken as a deposit when the second lease was signed in 2017. The managing director of the letting agents, Kevin Webster had lodged an email stating unequivocally that no additional £25 had been taken from the tenants. He stated that there was no record of such a payment. The Tribunal considered that had an additional payment of £25 been received that would have been recorded in the financial records kept by the letting agents associated with the tenancy. It was accepted by the applicants that all other payments to the letting agents were made electronically by bank transfer/direct debit. The Tribunal did not accept the applicant's evidence that they had paid £25 cash at the time the second lease was signed. The Tribunal preferred the evidence of the respondents and the written evidence from the letting agents. The Tribunal noted that the letting agents had procedures in place for dealing with deposits appropriately. The applicants provided no explanation for why the letting agents would ask for a payment in cash and not process any payment in the usual way that deposits were dealt with. The applicants was not able to provide any evidence of the additional payment. The written evidence in favour of the applicants' position was the second lease document which stated clearly at clause 3 that the deposit was £950. The Tribunal accepted the respondents' evidence that this was a typographic error. The Tribunal gave weight to the fact

that the rent had increased subsequent to the second lease to £975. It was not disputed that the deposit had not increased at that point which suggested that the increase in deposit was not automatically connected to an increase in rent which favoured the respondents position that the deposit remained the original amount. The Tribunal heard the application alongside a separate application in which the applicants sought an order for payment for unlawful eviction. That application had been refused. The evidence heard in relation to that application highlighted that the applicants had been upset at the action taken by their landlords. The Tribunal considered that the applicants response to being asked to leave the property provided an explanation for their evidence that an additional £25 was paid.

Decision

The Tribunal determines to dismiss the application.

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

8 January 2024

Date