



**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/22/1532**

**Re: Property at 15 Mentone Gardens, Edinburgh, EH9 2DJ (“the Property”)**

**Parties:**

**Miss Daisy Bradshaw, 2 New Street, Ford, Shrewsbury, SY5 9LN (“the Applicant”)**

**Mr Zee Ellahi, 12 Arboretum Road, Edinburgh, EH3 5PN (“the Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted in favour of the Applicant in the sum of £750.**

**Background**

1. By application received in the period between 23<sup>rd</sup> May and 21<sup>st</sup> June 2022 and made under Rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Rules”), the Applicant applied for an order for payment in the sum of £750 paid as a tenancy deposit to the Respondent.
2. The Applicant lodged a copy of the tenancy agreement between the parties that commenced on 3<sup>rd</sup> November 2021 and ended on 30<sup>th</sup> April 2022, copy bank statements, and correspondence between the parties.
3. Notification of the application and a Case Management Discussion was served upon the Respondent by Sheriff Officers on 5<sup>th</sup> August 2022.

## **The Case Management Discussion**

4. A Case Management Discussion (“CMD”) took place by telephone conference on 20<sup>th</sup> September 2022. The Applicant was in attendance. The Respondent was not in attendance.
5. The Tribunal considered the terms of Rule 29. The Tribunal determined that the Respondent had been given reasonable notice of the time and date of the CMD and that the requirements of Rule 17(2) had been satisfied and it was appropriate to proceed with the application in the absence of the Respondent.
6. The Applicant said she paid a tenancy deposit of £750 to the Respondent on 3<sup>rd</sup> November 2021, the date the tenancy commenced, as required by clause 10 of the tenancy agreement.
7. The Respondent gave notice to the Applicant that he was terminating the tenancy by text message, giving only three weeks’ notice. The Applicant said she requested return of her deposit, but the Respondent said he was retaining it to pay for a deep clean of the Property, a replacement mattress, and a change of lock, which added up to the sum of £1748.97.
8. The Applicant contacted the tenancy deposit schemes and was informed that the tenancy deposit was not lodged.
9. Responding to questions from the Tribunal, the Applicant said the lock change was because the Respondent was selling the Property and had been asked to change the locks by the selling agent. It was her position that this was not the responsibility of the tenants. It was her position that a deep clean was not required, nor was a replacement mattress required. Had the Respondent lodged the tenancy deposit, as required by the tenancy agreement, she would have challenged all these items during adjudication.

## **Findings in Fact and Law**

10.
  - (i) The parties entered into a tenancy agreement in respect of the Property that commenced on 3<sup>rd</sup> November 2021 and ended on 30<sup>th</sup> April 2022.
  - (ii) A tenancy deposit of £750 was paid to the Respondent by the Applicant at the commencement of the tenancy.
  - (iii) The tenancy agreement between the parties provided that the tenancy deposit would be lodged in an approved scheme and that the Respondent could apply to the scheme for reasonable costs to be deducted from any deposit paid by the Applicant in certain scenarios including the requirement for repairs or cleaning.
  - (iv) The tenancy deposit was not lodged with a tenancy deposit scheme.

- (v) The deposit was not returned to the Applicant at the end of the tenancy.
- (vi) No adjudication took place regarding whether or not the Respondent was entitled to retain the deposit.
- (vii) No vouching or representations have been put forward by the Respondent to justify his retention of the deposit.
- (viii) The Applicant is entitled to recover her deposit.

### **Reasons for Decision**

11. The Respondent has retained the tenancy deposit of £750. The tenancy agreement between the parties provides that the tenancy deposit will be lodged in an approved scheme and that the Respondent can apply to the scheme for reasonable costs to be deducted from any deposit paid by the Applicant in certain scenarios including the requirement for repairs or cleaning. The Respondent did not lodge the tenancy deposit with an approved scheme, therefore no adjudication took place.
12. The Respondent did not appear at the CMD to put forward any representations regarding whether or not he was entitled to retain the deposit, nor did he lodge any evidence such as vouching for sums retained.
13. The Applicant is entitled to the return of her deposit.

### **Decision**

14. The Tribunal grants an order for payment in favour of the Applicant in the sum of £750.

### **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.**

# H Forbes

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Legal Member/Chair

20<sup>th</sup> September 2022  
Date