



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under s.71(1) of the Private Housing (Tenancies)(Scotland) Act 2016.

Chamber Ref: FTS/HPC/PR/20/0165

Re: Property at 513 – 517 Shields Road, Glasgow, G41 2RF (“the Property”)

Parties:

Miss Helenia Kaur Rai residing at flat 0/2 1 Burgh Hall Lane, Glasgow (“the Applicant”)

And

Lets Direct (Southside) Ltd, a company incorporated under the Companies Acts and having a place of business at 602 Cathcart Road, Glasgow G42 8AD (“the Respondents”)

Tribunal Members:

Paul Doyle (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be made.

Background

The Applicant sought an order for payment of £575.00 because she tendered that sum as a deposit for a rental agreement which was ultimately not entered into. The Applicant had lodged Form G with the Tribunal. The documents produced were copies of correspondence passing between the parties and proof of payment of £575.00 by the applicant to the respondent.

Case Management Discussion

A case management discussion took place by telephone conference at 2pm on 16 July 2020. The Applicant was present (by telephone). The hearing was delayed until 2.13 pm to allow sufficient time for the respondent to participate, but there was no appearance by or on behalf of the Respondent.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Respondents are a company incorporated under the Companies Acts. They act as letting agents and advertise properties for rental to prospective private tenants. In August 2019 the respondents advertised a studio flat for rental in Shields Road, Glasgow.

2. The applicant emailed the respondents expressing interest in leasing the property at Shields Road Glasgow. The respondent advised the applicant that the property was available at a rental of £575 pcm from Mid-September 2019. By email dated 22 August 2019 the applicant asked the respondent to reserve the property for her. On the same day the respondent emailed the applicant in response saying

If you want to reserve a room from 01st October then we would ask you to pay the deposit now and then pay rent on 01st Oct. You would only get the keys when you have paid the rent. We would organise a room for you to move in for 01st Oct or before should you want to move in earlier.

We suggest you pay the deposit soon as so you don't lose out.

3. After an exchange of emails on 22 August 2019, the applicant paid the respondent a deposit of £575.00. At that stage, the applicant had not viewed the property. There followed an exchange of emails between the parties in which the applicant asked questions about the property to which the respondents responded. The exchange included negotiation about the date of entry.

4. On 31 August 2019 the respondent emailed the applicant saying

The market currently is very busy due to all students looking to move in September. This studio has come up and is available for you. We may NOT have a studio available come October. We would highly recommend you take this room to safeguard yourself. If you feel you don't want to do this we can offer this studio to someone else and offer you a full refund.

5. On 5 September 2019 the applicant emailed the respondent saying

Thank you for your email and for the viewing of the property however I do not wish to proceed with the application and would like to request my deposit back.

6. No rental agreement was entered into between the parties. The respondent emailed the applicant on 9 September 2019 saying

Can you advise who advised that the deposit would be returned to you?

7. On 9 September 2019 the applicant sent the respondent a copy of the respondent's email dated 5 September 2019. On 11 September 2019 the respondent emailed the applicant saying that the deposit was not refundable. On 19/12/2019 the applicant applied to the Tribunal for repayment of the deposit under section 71(1) of the Private Housing (Tenancies)(Scotland) Act 2016.

8. Notice of the date of this hearing was served on the Respondent by letter on 19 June 2020. The respondent does not oppose the application.

Reasons for the Decision

1. The Tribunal determined to make an Order for payment of £575.00. The only contract there could be between the respondent and applicant is formed by the respondent's email dated 31 August 2019 and the applicant's email dated 5 September 2019. In those emails, the respondent (correctly) offers to refund the deposit, and the applicant accepts that offer.

2. The applicant paid £575 to the respondent on the understanding that it was a returnable deposit securing a studio flat for rental if she chose to sign a rental agreement after viewing the property.

3. The respondent told the applicant that payment of the deposit would secure a studio flat to move into on 1st October 2019, and, after receiving payment, said that there might not be a studio flat available on 1st October 2019 because, even though the purpose of the deposit was to secure the property for the applicant alone, the property will have been let to someone else in September 2019.

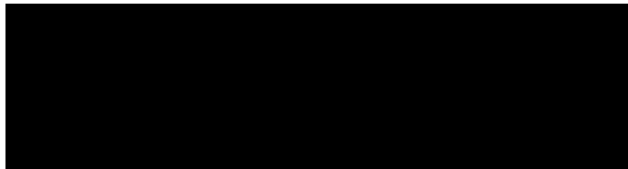
4. The respondents have no right in law to retain the deposit paid by the applicant. In the respondent's own words, the sums paid are refundable. It is arguable that the words employed by the respondents in their emails of 9 and 11 September 2019 constitute an offence under parts 7 and 8 of the Rent (Scotland) Act 1984.

Decision

For the foregoing reasons, the Tribunal determined to make an Order for payment.

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

Date 16 July 2020