



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/22/0003

Re: Property at 1/2, 39 Regent Moray Street, Glasgow, G3 8AL (“the Property”)

Parties:

Mr Daniel Adams, 1/2 27 Skirving Street, Glasgow, G41 3AB (“the Applicant”)

Mr Adil Mahmood, 12 South Bridge, Unit 243, Edinburgh, EH1 1DD; and Mr Rabee Harb, 6 Tullis Street, Glasgow, G40 1HN (“the Respondents”)

Tribunal Members:

Nicola Irvine (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Order for Payment against the First Respondent in favour of the Applicant in the sum of £100.00.

Background

1. An application was submitted on 3 January 2022 in terms of Rule 111 (Application for civil proceedings in relation to a private residential tenancy) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.
2. The Applicant sought repayment of a deposit of £100.00, which he paid to the First Respondent in respect of a tenancy of the Property.
3. By decision dated 28 January 2022, a Convenor of HPC having delegated powers of the Chamber President, referred the application under Rule 9 of the Rules to a Case Management Discussion.
4. In support of his application, the Applicant produced copies of e-mail and whatsapp correspondence; information about the tenancy including the parties, the address of the subjects, the start of the tenancy, the end of the tenancy, the

rent payable and the frequency of the rental payments; evidence of the payment of the deposit; and evidence that the deposit had not been placed in any approved schemes.

The Case Management Discussion

5. The Applicant participated in the case management discussion which took place by conference call and proceeded in the absence of the Respondents. Notice of the case management discussion had been served on the First Respondent by Sheriff Officer on 21 February 2022. Notice of the hearing had not been served on the Second Respondent. The Applicant failed to comply with the Notice of Direction, requiring him to provide an alternative address for the Second Respondent. The Applicant explained that he did not have any alternative address for the Second Respondent and he sought no order against him. The Applicant's position was that the First Respondent was his landlord and did not hold himself out as an agent for any other party. The Tribunal was satisfied with the explanation provided.
6. The Applicant referred the Tribunal to the papers which had been lodged in support of the application, including e-mail and whatsapp correspondence with the First Respondent; information provided about the tenancy; evidence of the payment of the deposit; and email correspondence with Safe Deposits Scotland, My Deposits Scotland and Letting Protection Service Scotland.
7. The Applicant advised that he was unable to provide a copy of the tenancy agreement as he was never given a written agreement. He advised that information regarding the tenancy was exchanged via email correspondence with the First Respondent. The email contained various attachments named 'House Rules', 'House Cleaning Rules', 'House Utility and Inspection Rules', 'Black Mould'. The attachments did not provide any further information in respect of the tenancy agreement and related to the property itself. The First Respondent asked the applicant to read the attached documents, fill out an online form, pay the deposit of £100, email him an official form of photo ID and ensure that the rent due for the month is paid on or before the date that the Applicant collected his keys.
8. The Applicant advised that the tenancy start date was 15 May 2021 and the rent payable was £500 per calendar month. The Applicant further advised that he often incurred costs for heating and other expense on behalf of the First Respondent and deduced those costs from the rent due. The Applicant paid a deposit of £100 to the First Respondent. The Applicant expected the deposit to be repaid at the end of the tenancy.
9. The Applicant advised that he sent a text message to the First Respondent on 26 November 2021 requesting that his deposit was repaid. The First Respondent did not respond to this message. The Applicant advised that the First Respondent refused to repay the deposit as there was a dispute over the heating payments that the Applicant had incurred.

10. The Applicant advised that there were other tenants living in the property. The Applicant was made aware that the other tenants received their deposit back. He understood that they had received the deposit directly from the First Respondent instead of through an approved tenancy deposit scheme.

11. Findings in Fact and Law

- a. The Applicant and First Respondent entered into a tenancy which commenced on 15 May 2021.
- b. The Applicant paid the First Respondent a tenancy deposit of £100 on or around 6 May 2021.
- c. The tenancy ended on 30 November 2021.
- d. The tenancy deposit had not been repaid to the Applicant.

Reasons for Decision

12. Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 provides that the First Tier Tribunal has jurisdiction in relation to civil proceedings arising from private residential tenancies. As this tenancy is a private residential tenancy the Tribunal has jurisdiction to determine the present application.

13. The First Respondent failed to submit any written representations and failed to participate in the case management discussion.

14. The Applicant advised that the First Respondent was the landlord of the property. The Applicant advised that there was no indication that the First Respondent was acting on behalf of anyone else and he had no knowledge of the Second Respondent. The Applicant therefore asserted that the First Respondent is liable to repay him the deposit which he paid in respect of the property. The Applicant submitted that the First Respondent failed to do so and he had submitted written evidence in support of his claim.

15. On the basis of the oral submissions of the Applicant and having regard to all papers submitted including the application, the Tribunal was satisfied that the First Respondent ought to make payment to the Applicant in the sum of £100, representing repayment of the deposit.

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.

Nicola Irvine

Legal Member/Chair

5 April 2022

Date