



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/CV/18/1759

Re: Property at 40c Green Street, Salcoats, KA21 5HQ (“the Property”)

Parties:

Mr Kemal Cevik, 35 Hamilton Street, Salcoats, KA21 5DT (“the Applicant”)

Trust Property Letting, 39 Inchonnachan Avenue, Balloch, Alexandria, Dumbartonshire, G83 8JN (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

This is an application for a compensation order dated 27th June 2018 and brought in terms of Rule 103 (Application for order for payment where landlord has not paid the deposit into an approved scheme) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant seeks payment of compensation in respect of an alleged failure by the Respondent to pay the deposit he originally asserts he provided of £340.00 in relation to the tenancy agreement into an approved scheme within 30 days of receipt of that sum.

The Applicant has provided with his application copies of the short tenancy agreement and a bank deposit receipt for £340.00.

A Case Management Discussion was held on 9th October 2018, at which both parties were present. Various issues were discussed, and the Tribunal was advised by the applicant that the deposit amount paid by him to the Respondent was £300.

The Respondent's position was that no deposit was sought by him, and none was paid, in respect of the tenancy agreement.

Another matter of particular importance raised by the Tribunal was the issue of when the tenancy agreement ended. Neither party was able to confirm that date to the Tribunal at that time, but both agreed it was at some time around the end of March 2018.

This issue is of importance, as an application under rule 103 must be brought no later than 3 months from the end of the tenancy in terms of Regulation 9 of the *Tenancy Deposit Schemes (Scotland) Regulations 2011*.

The Tribunal issued directions to each party to produce evidence in relation to the date of the end of the tenancy.

Thereafter, a Hearing was held on 28th November 2018, at which both parties were present together with the Applicant's representative, Miss Evitts.

The Respondent had provided a detailed e-mail to the Tribunal dated 22nd October 2018 explaining that the tenancy ended on 25th March 2018. He provided a partial copy of a Model Private Residential Tenancy agreement in relation to the property between him and a new tenant, Miss Julie Cameron, which commenced on 26th March 2018. He also indicated that he had been told by North Ayrshire Council, Council Tax Department that the Applicant was liable for Council Tax on the Property up till 25th March 2018.

The Applicant stated that he did not accept that the tenancy ended on 25th March 2018, nor that a new tenant took up a new tenancy of the Property on 26th March 2018. He stated that he left the Property and the tenancy ended on 5th April 2018. He accepted that he had no documentary evidence to support his position.

The Applicant indicated that he had sent an e-mail to the Tribunal outlining his position in response to the earlier direction. The Tribunal has no record of this e-mail, and accordingly it was not forwarded to the Respondent to give him notice of the Applicant's position.

The Respondent confirmed to the Tribunal that he could produce a full copy of the Model Private Residential Tenancy agreement signed by the new tenant, and could probably ask her to give evidence or obtain an affidavit or statement confirming that she took up the tenancy on the 26th March 2018.

He also confirmed that he believed he would be able to obtain information from the Council in writing about when the Applicant ceased to be liable for Council Tax at the Property.

Finally, he indicated that the Applicant paid him no rent in respect of any period after the 25th March 2018.

The Tribunal adjourned the Hearing before commencing hearing evidence to consider the parties' explanations. The Tribunal felt that to deal with the proceedings justly in terms of Rule 2 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, the parties should both be given an opportunity to produce the important evidence to which they referred. This was particularly so in respect of the Respondent in circumstances where he had not received any notice from the Tribunal of the Applicant's position with regard to the date when the tenancy ended.

In these circumstances, the Tribunal adjourned the Hearing for both parties to produce further evidence before a further Hearing.

The Applicant was to produce a full principal copy of the Model Private Residential Tenancy agreement signed by the new tenant, together with a rent statement. He might also produce evidence, if he is able to, from the appropriate Council Tax Department confirming when the Applicant ceased to be liable for Council Tax at the Property, and when the new tenant commenced liability for Council Tax at the Property, together with confirmation from the new tenant as to when she took up occupation of the Property in terms of her tenancy agreement.

The Respondent indicated that he had no further material in writing which he could produce. There were no further receipts, other documents or copies of text messages. He would investigate with the appropriate Council Tax Department whether it could confirm when the Respondent advised it of the termination of his liability for Council Tax, and obtain written confirmation from it of that if he was able to.

The Hearing

A continued Hearing was held on 16th January 2019 at Ardrossan Civic Centre, Glasgow Street, Ardrossan. Neither the Applicant, nor his representative, appeared. The Tribunal clerk made three attempts to telephone the Applicant's representative, but received no reply, prior to the continued Hearing commencing. Neither the Applicant, nor his representative have made contact with the Tribunal since the previous hearing on 28th November 2018. The Respondent again appeared, and was not represented.

The Respondent e-mailed the Tribunal on 13th December 2018, and provided with his e-mail a full copy of the Model Private Residential Tenancy agreement signed by the new tenant, Miss Julie Cameron, and dated 26th March 2018.

He also provided a letter addressed to himself from North Ayrshire Council dated 2nd December 2018 confirming that the Applicant was registered for Council Tax at the Property until 25th March 2018.

Finally, he provided a letter from Miss Julie Cameron to the Tribunal dated 29th November 2018, in which Miss Cameron confirmed that she took up the tenancy of the Property on 26th March 2018 and moved into it on that day in terms of the Tenancy agreement of the same date.

At the continued Hearing, the Respondent provided the principal full Model Private Residential Tenancy agreement. He indicated that his position was that the Applicant's tenancy of the Property ended on 25th March 2018, when he quit the Property.

Reasons for Decision

Regulation 9 of the *Tenancy Deposit Schemes (Scotland) Regulations 2011* provides as follows:

"9.—

(1) A tenant who has paid a tenancy deposit may apply to the First-tier Tribunal for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.

(2) An application under paragraph (1) must be made no later than 3 months after the tenancy has ended."

The Applicant has brought this application in respect of an alleged breach of Regulation 3 with regard to an alleged deposit. In terms of Regulation 9(2), such application must be brought no later than 3 months after the tenancy has ended.

The Tribunal has been provided with evidence showing that:

- 1) The tenancy agreement between the parties had a potential *ish* date of the 26th day of each month in terms of the agreement.
- 2) The Respondent entered into a new tenancy agreement with a new tenant, Miss Cameron, which agreement commenced on 26th March 2018.
- 3) Miss Cameron has confirmed to the Tribunal in writing that she commenced occupation of the Property on 26th March 2018 in terms of her tenancy agreement.
- 4) North Ayrshire Council have confirmed in writing that that the Applicant was registered for Council Tax at the Property until 25th March 2018.
- 5) The Respondent has confirmed that the Applicant left the Property on 25th March 2018.

Other than a verbal assertion made by the Applicant's representative at the previous Hearing of 28th November 2018 that the Applicant's position is that he did not leave the Property until 5th April 2018, the Tribunal has been provided with no other evidence on this assertion. Indeed, this assertion conflicts with his original position at the Case Management Discussion of 9th October 2018, where the parties advised the Tribunal that the tenancy ended on a date at the end of March 2018.

The Applicant has not attended the continued Hearing today, and all of the written documentation above referred to contradicts his assertion that he left the Property on 5th April 2018 and supports the Respondent's position that the Applicant left the Property on 25th March 2018.

In these circumstances, the Tribunal accepts the evidence that the Applicant left the Property on 25th March 2018, which is the date that the tenancy ended.

That being so, this application dated 27th June 2018 has been brought later than 3 months after the tenancy ended, and accordingly is in breach of the provisions of Regulation 9(2) which provides that such applications must be brought no later than 3 months after the tenancy ended.

Decision

For the foregoing reasons, the Tribunal will dismiss this application upon the basis that it has not been brought timeously.

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.

Neil Kinnear

Legal Member/Chair

16/01/19

Date