



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 and Regulations 3 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/20/0293

Re: Property at 128 Beatty Crescent, Kirkcaldy, KY1 2HY (“the Property”)

Parties:

Mrs Kelly-Anne Bishun, 0/1, 48 Murano Street, Glasgow, G20 7RU (“the Applicant”)

Mr Robert Munro, 4 Culzean Crescent, Kirkcaldy, KY2 6UZ (“the Respondent”)

Tribunal Members:

George Clark (Legal Member)

Decision (in absence of the Applicant)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be refused.

Background

By application, received by the Tribunal on 29 January 2020, the Applicant sought an Order for Payment in respect of the failure of the Respondent to lodge a deposit in an approved tenancy deposit scheme as required by Regulation 3(1) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”).

The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties commencing on 5 February 2018 at a rent of £520 every 4 weeks. The Agreement provided that the first rent payment was due on 5 March 2018 for the period from 5 February 2018.

The Applicant also provided the Tribunal with a copy of a previous tenancy agreement for another property. The tenancy commenced on 26 October 2015 and the agreement provided for payment, at the start of the tenancy, of a deposit which as the equivalent of 4 weeks’ rent. It also provided that the rent of £460 per 4 week period was payable in advance. The Respondent was the letting agent, but was not the landlord under that agreement.

In the application, the Applicant stated that the Respondent had been the letting agent for her previous tenanted property. The deposit for that property had been £460 and had not been returned at the time. The Respondent had asked her to top up the figure by £60 to provide the deposit for the Property. She had provided both tenancy agreements to show that there were sections missing from the Tenancy Agreement for the present Property, namely those relating to the deposit.

On 17 February 2020, the Tribunal advised the Parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written representations by 9 March 2020.

On 18 February 2020, the Respondent provide the Tribunal with a Rent Statement which showed receipt on 18 February 2018 of £460. The next payment was of £580 on 16 March 2018. The Statement showed arrears as at October 2018 of £1,610. The Respondent also provided a copy of an Action Plan from Fife Council Private Sector Team which contained a note, dated 28 May 2018, to the effect that the Respondent does not take deposits for any of their properties.

On 14 March 2020, the Respondent told the Tribunal that the Applicant had paid £460 on the day she moved in to the Property, towards her first month's rent.

Case Management Discussion

A Case Management Discussion was held at Fife Voluntary Action, 16 East Fergus Place, Kirkcaldy, on the morning of 18 March 2020. The Applicant was not present or represented. The Respondent was represented by his daughter, Miss Debbie Munro.

Miss Munro explained to the Tribunal that the Respondent does not take rent deposits for any of their 48 properties. The Respondent had initially decided not to rent the Property to the Applicant, as there had been rent arrears for her previous property. The Applicant had, however, then offered to pay the first month's rent in advance and, as a result, the Respondent had agreed to let her have a tenancy of the Property. She had only had £460 to offer on the day she moved in, but she had paid the balance of £60 with her next rent payment on 16 March 2018.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a hearing.

The 2011 Regulations state that a landlord must, within 30 working days of the beginning of the tenancy pay the deposit to the scheme administrator of an approved scheme and provide the tenant with certain information under Regulation 47 of the 2011 Regulations. The question the Tribunal had to decide was whether the payment made by the Applicant on 5 February 2018 was, in whole or in part, a tenancy deposit.

The Tribunal noted that the copy of the Private Residential Tenancy Agreement between the Parties was complete and that it did not contain any provision for a deposit. This, along with the Action Plan from Fife Council, supported the Respondent's contention that they did not take tenancy deposits. The Applicant had provided a copy of her previous tenancy agreement, but it did not support her contention that a section was "missing" from the Agreement for the Property. The earlier agreement was an Assured Tenancy Agreement which differed materially in

content and presentation from the Scottish Government Model Tenancy Agreement which formed the basis of the Private Residential Tenancy Agreement in respect of the Property.

The Tribunal accepted the evidence led on behalf of the Respondent in relation to the payment made on 5 February 2018. It was shown on the Rent Statement as "Cash", with all later payments being shown as "Bank". This was not consistent with the Applicant's contention that the deposit for her previous property had, in effect, been transferred over to the new Property and then topped up by her by £60 the following month. The view of the Tribunal was that, had that been the case, the original deposit, which was held by the Respondent as letting agent, would not have been returned and the payment on 5 February 2018 would not have been cash.

Having considered all the evidence before it, the Tribunal determined that the payment of £460 made in cash on 5 February 2018, had been a payment towards the first month's rent and had not been a deposit. Accordingly, there was no requirement to lodge it in an approved tenancy deposit scheme and the application must be refused.

Decision

The Tribunal determined that the application should be refused.

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.

Mr George Clark

Legal Member/Chair

18/03/2020

Date