

Housing and Property Chamber
First-tier Tribunal for Scotland



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/PR/18/1797

Re: Property at 24 Altour Road, Spean Bridge, PH34 3EZ (“the Property”)

Parties:

Mr Michael Paliszewski, 10 Tippet Knowes Court, Winchburgh, EH52 6UW (“the Applicant”)

Mr Nathan Marsh, 24 Altour Road, Spean Bridge, PH34 3EZ (“the Respondent”)

Tribunal Members:

George Clark (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) decided to determine the application without a hearing, determined that the application should be granted and that the Respondent should pay to the Applicant the sum of Eight Hundred and Twenty Pounds.

Background

By application, received by the Tribunal on 17 July 2018, the Applicant sought an Order that the Respondent had failed to lodge the deposit he had paid in respect of the Property with an approved tenancy deposit scheme and wished a payment of £1,800, being three times the amount of the deposit, together with the return of the deposit itself.

The tenancy had commenced on 14 January 2018 and he had vacated the Property on 9 May 2018. He had paid a deposit of £300 at the commencement of the tenancy, a further £300 having been paid by a co-tenant. The co-tenant moved out on 24 April 2018 and the Applicant had agreed to take on the whole property and, on 27/28 April 2018, had paid a further £300 by way of deposit.

The application was accompanied by a printout of Facebook messages between the Parties dated from 26 December 2017 to 10 June 2018.

The Respondent made written representations to the Tribunal by e-mail dated 13 September 2018. He did not dispute the contention that he had not placed the

deposit in an approved tenancy deposit scheme, but pointed out that the Applicant had moved out within 30 days of making the second payment of £300. The Parties had been in the process of finalising the details of a new tenancy agreement when the Applicant moved out.

On 18 September 2018, the Tribunal advised the Parties of the date and location of a Case Management Discussion.

Case Management Discussion

A Case Management Discussion took place at The Inveralmond Business Centre, Auld Bond Road, Perth on the morning of 10 October 2018. Both Parties were present at the Case Management Discussion.

The Applicant advised the Tribunal that he had learned on 9 May 2018 that he was losing his job in Fort William. He moved out of the Property on that day, but returned on 13 May 2018, to carry out a final cleaning and remove the last of his belongings. He accepted that he had not given prior notice to the Respondent and it was agreed that this had not been given until Saturday 12 May, in a Facebook message. He had paid his rent for the room he had been renting up to 24 May 2018, but had not paid anything in respect of "taking over" the remainder of the Property.

The Respondent told the Tribunal that negotiations between the Parties had taken place after the co-tenant moved out on 24 April 2018. There was a draft lease, but it had not been finalised by the time the Applicant vacated the Property. The rent under the new arrangement was £200 per week. He accepted that the initial deposit of £300 had not been placed in an approved tenancy deposit scheme, but he had thought of the Applicant and his co-tenant as lodgers as, due to his personal circumstances at the time, the Respondent retained the third bedroom in the Property for his own use, should he require it. He accepted that he had not, in fact, slept in the Property since the commencement of the tenancy.

The Respondent stated that, if he had lodged the deposit in an approved scheme, the amount of rent he was due as a result of the Applicant failing to give him notice, would have exceeded the deposit in any case. He had offered to repay the deposit in order to avoid the necessity of both Parties travelling to Perth for the Case Management Discussion, but the Applicant had not responded to this offer and, as the Case Management Discussion was taking place, the offer was withdrawn.

The Applicant told the Tribunal that he had paid the rent (at £300 per month) for the room he had originally occupied, up to and including 24 May 2018. The Respondent did not dispute that, but repeated that he had not received any notice from the Applicant, so was due rent for 4 weeks after 12 May 2018.

Findings in Fact

- The Respondent received a deposit of £300 on or about 14 January 2018.
- The Respondent received a further sum of £300 over 27 and 28 April 2018 by way of deposit.
- The Respondent has not placed either of these sums in an approved tenancy deposit scheme.
- Both parties acted on the faith of a verbal agreement that the Respondent could take over the remainder of the Property on a lease when the co-tenant moved out on 24 April 2018, the new rental to be £200 per week. The

Applicant acted on the faith of that agreement by paying the additional deposit sum.

- The Applicant did not give notice to the Respondent of his intention to vacate the Property until 12 May 2018 and that he moved out the last of his belongings on the following day.
- The Applicant vacated the Property within 30 days of the second deposit payment being made.

Reasons for Decision

In terms of Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, the Tribunal "*may do anything at a case management discussion which it may do at a hearing, including making a decision*". The Tribunal was of the view that it had before it all the information and evidence it required to make a decision and, accordingly, decided to determine the application without a hearing.

The Tribunal determined that whilst it was not reduced to writing, there was a tenancy agreement between the parties. From 14 January 2018, this was in respect of a single room in the Property, with the use in common of kitchen and bathroom facilities. On 24 April 2018, the arrangement became a lease of the entire Property at the rate of £200 per week. The tenancy was granted after the coming into force of the Private Housing (Tenancies) (Scotland) Act 2016.

The Tribunal held that the Respondent had not lodged either the initial deposit or the later additional deposit in an approved tenancy deposit scheme. Regulation 3(1) of the Tenancy Deposit Scheme (Scotland) Regulations 2011 ("the 2011 Regulations") provides 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*". Under Regulation 10 of the 2011 Regulations, if the Tribunal is satisfied that the landlord did not comply with any duty under Regulation 3, "*the tribunal must order the landlord to pay to the tenant an amount not exceeding three times the amount of the tenancy deposit*".

The Tribunal held that the Respondent had failed to comply with the duty under Regulation 3 of the 2011 Regulations in respect of the original deposit payment of £300, but not in relation to the second payment of £300, as the Respondent would have had 30 working days from 28 April within which to lodge it with an approved scheme, but the Applicant had vacated the Property and terminated the lease before that period had expired.

The Tribunal accepted that, had the Respondent given the minimum 28 days' notice required of a tenant by Section 49(3)(ii) of the Private Housing (Tenancies) (Scotland) Act 2016, he would have remained liable to pay rent up to the date on which that notice period expired. Notice had been given on 12 May 2018 and the Applicant had removed the last of his belongings on the following day. The Applicant would, therefore, have been contractually bound to pay the sum of £800 for the period of 28 days from 12 May 2018. The Parties accepted that, in respect of the letting of the single room, rent at the rate of £300 per month had been paid up to and including 24 May 2018, so the sum of £120 would have been set off against the £800, leaving a balance due to the Respondent of £680. This exceeded the amount of the deposit held by the Applicant and the Tribunal took this into account in

assessing the amount to be paid to the Applicant in respect of the Respondent's failure to lodge the deposit of £300 in an approved scheme.

Decision

The Tribunal determined that the Respondent had failed to comply with the duty under Regulation 3 of the 2011 Regulations to lodge the sum of £300 in an approved tenancy deposit scheme and that, in terms of Regulation 10 of the 2011 Regulations, the Respondent should pay to the Applicant the sum of £820 in respect of that failure.

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.

George Clark

Legal Member/Chair

10 October 2018
Date