

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 Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011.

Chamber Ref: FTS/HPC/PR/19/0205

Re: Property at Flat 2/2, 73 Waverly Gardens, Glasgow, G41 2DN (“the Property”)

Parties:

Miss India Daly, Flat 3/1, 910 Shettleston Road, Glasgow, G32 7XN (“the Applicant”)

Mr Ryan Laskey, Mr Thomas Flay, Flat 2/2, 73 Waverly Gardens, Glasgow, G41 2DN (“the Respondents”)

Tribunal Members:

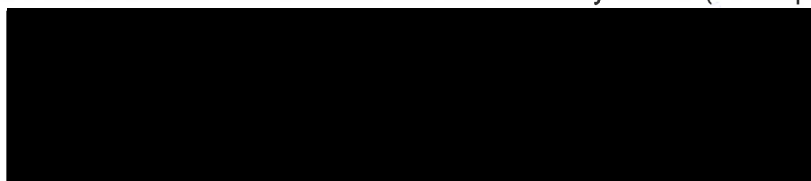
Lesley Ward (Legal Member)

Decision: (in absence of the respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application in terms of Regulation 3 and 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 was not competent and dismissed the application.

This is case management discussion ‘CMD’ in connection an application in terms of rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, ‘the rules’ and Regulation 3 and 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011, ‘the regulations’.

The application was made by Govan Law Centre on 18 January 2019 on behalf of Miss India Daly. The applicant was represented today by Ms Christine McKellar solicitor of Govan Law Centre. The respondents did not attend and were not represented. The tribunal had sight of the execution of service of the application and CMD details on the respondents on 2 April 2019. The second respondent has however been wrongly designed in the papers. It appears, according to an email sent by the applicant’s solicitors to the tribunal on 28 January 2019 (in response to



the tribunal seeking clarification on this point), that the second respondent is Thomas Flay and not Slay or Play. Unfortunately, since then, the applicant's solicitors appear to have used various spellings for the second respondent interchangeably.

Preliminary matter

The tribunal proceeded with the CMD in the absence of the respondents as the tribunal was satisfied that the respondents had received appropriate notification of the CMD, albeit that the second respondent's name appears to have been misspelt. The tribunal decided to have a preliminary hearing regarding the competency of the application, before dealing with the merits of the application. The applicant's agents have lodged various legal authorities in connection with the applicant as there is no signed lease or tenancy agreement.

The application and supporting legal arguments content that the parties entered into a verbal arrangement for the applicant to rent a room from the respondents in their flat. The applicant's position is that she paid a deposit and this was not lodged in a deposit scheme

It was the tribunal understanding that the applicant resided for some time in a room in a flat that both respondents also lived in. Ms McKellar confirmed that the tribunal's understanding was correct.

This being the case, the tribunal considered the terms of regulation 3 and sought submissions from the applicant's solicitor in connection with the competency of the application. Regulation 3 relates to "Duties in relation to tenancy deposits". Regulation 3(3) provides:

- (3) A "relevant tenancy" for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement-*
- (a) in respect of which the landlord is a relevant person and*
 - (b) by virtue of which a house is occupied by an unconnected person.*

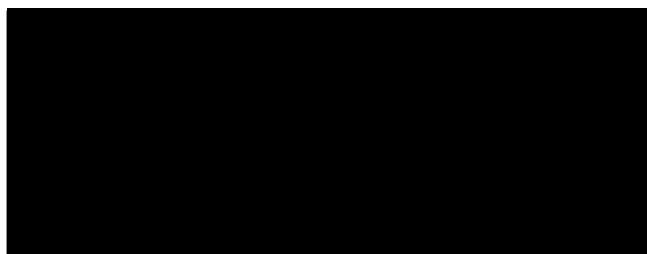
Unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.

- (4) In this regulation, the expressions "relevant person" and "unconnected person" have the meanings conferred by section 83(8) of the 2004 Act.*

The "2004 Act" is the Antisocial Behaviour etc (Scotland) Act 2004. S83(6) provides:

For the purposes of subsection 1(b) the use of a house as a dwelling shall be disregarded if-

.....



(e) the house is the only or main residence of the relevant person.

S18(8) provides:

In this Part -

“relevant person means a person who is not –

- (a) a local authority
- (b) a registered social landlord
- (c) Scottish homes.

The tribunal’s view is therefore that even before the issue of the existence of a tenancy and payment of a deposit is looked at, the fundamental problem with this application is that the regulations do not apply because the putative landlord and putative tenant all resided in the one property when any putative deposit was paid. Regulation 3(3) specifically excludes this type of arrangement from the operation of the scheme. In the absence of any legal argument to the contrary the tribunal therefore dismissed the application.

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.

23 April 2019

Lesley A Ward Legal Member

Date