



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/PR/21/1618

Re: Property at 116C Main Street, Bridgeton, Glasgow, G40 1LX (“the Property”)

Parties:

Mrs Angela McGarvey, C/O Dougan, 101 Dale Avenue, Glasgow, G72 7EY (“the Applicant”)

John Mitchell, Jackie Mitchell, Frances Mitchell, 25 North Calder Place, Glasgow, G71 5NS (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member)

Decision

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

BACKGROUND

1. The Applicant rented the property from Mr John Mitchell, the lease commencing during March 2021;
2. There was no written lease although it was agreed that rent would be paid at the rate of £500.00 per calendar month and a £500.00 tenancy deposit required to be paid also;
3. The first month’s rental payment and the tenancy deposit of £500.00 was paid to John Mitchell by bank transfer on 15th March 2021;
4. The tenancy ended during June 2021. The Applicant indicated to the Respondent that she intended vacating the premises on 25th June 2021. The Respondent proceeded on the basis that the property would be vacant thereafter. The Applicant, however, vacated the premises on 18th June 2021;

5. The tenancy deposit was never lodged with an approved tenancy deposit scheme;
6. Following the termination of the tenancy John Mitchell returned £375 of the deposit to the Applicant;

THE CASE MANAGEMENT DISCUSSION

7. The Applicant participated in the Case Management Discussion. Mr John Mitchell also participated. While the application to the Tribunal names three persons as Respondents, Mr John Mitchell advised that the person named as Jackie Mitchell was, in fact, him. He is known as Jackie Mitchell as well as John Mitchell. He advised that Frances Mitchell is his mother who is now deceased. He accepted that the proceedings were properly directed against him given the background circumstances of the tenancy agreement;
8. Mr Mitchell indicated that the property is, in fact, owned by his wife but he had agreed to allow the Applicant to reside in it for a period of time. He did that, as he seen it, as a favour for his own sister, who knew the Applicant, and approached him indicating that she required somewhere to live on a short term basis;
9. He thought that there should have been a written lease for the premises but was unable to locate one. The Applicant advised that the agreement to rent the premises was entered in to verbally and Mr Mitchell was content to proceed on that basis. The Tribunal did enquire as to whether or not he wished further time to locate the lease but he advised that he had already looked for it and had been unable to find it so there may not, in fact, have been a written lease in existence;
10. Mr Mitchell appeared confused by the application and did not understand why it had been presented. He accepted that the Applicant had occupied the Property since March 2021, that the rent was £500 per month and that all rental payments had been paid, with one exception. That one exception was the rental payment due for the period from 18th June 2021 until 25th June 2021. He explained that the Respondent had indicated that she would vacate the premises on 25th June 2021 but had then left one week early. He, however, had been proceeding on the basis that the property would be empty on 25th June and was unable to make arrangements for it to be let to anyone else for the one week period after the Applicant had moved out, in his view unexpectedly. The rent for that one week period would have been £125;
11. He returned £375 of the deposit to the Applicant, retaining £125 in relation to the rent for that one week period which he believed was due to him;
12. He accepted the following:-
 - £500 had been paid to him as a tenancy deposit;

- He did not lodge the tenancy deposit money with an approved tenancy deposit scheme;
 - At the termination of the tenancy he returned £375 of the tenancy deposit to the Applicant, retaining £125 himself.
13. He advised that he had not lodged the tenancy deposit with an approved scheme for a variety of reasons which included:-
- It was only a short term lease and he did not see the point in lodging the funds for a short period;
 - He “didn’t know where (his) head was” following the death of his mother;
 - He was only renting the property to the Applicant as a favour to his sister;
14. The Tribunal explained the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the TDS Regs”) to the Respondent and he accepted that the regulations existed and that he had failed to comply with them;
15. The Applicant was asked to provide any submissions she wished in relation to the penalty which should be imposed upon the Respondent. The Applicant advised that she was simply seeking to have the £125 balance of the deposit returned to her. She was not seeking any penalty beyond that. Mr Mitchell promptly indicated that he would have no issue if an order in that amount was to be made against him and the Applicant, again, confirmed her willingness to proceed on that basis;
16. Considering the agreement between the parties, the Tribunal concluded that, in this particular case, it was appropriate to impose a penalty upon Mr Mitchell in the sum of £125 arising from his failure to comply with the TDS Regs;

FINDINGS IN FACT

17. The Tribunal found the following facts to be established:-
- a) The Applicant rented the property from Mr John Mitchell, the lease commencing during March 2021;
 - b) There was no written lease although it was agreed that rent would be paid at the rate of £500 per calendar month and a £500 tenancy deposit required to be paid also; The first month’s rental payment and the tenancy deposit of £500 was paid to John Mitchell by bank transfer on 15th March 2021;
 - c) The applicant indicated to the Respondent that she intended vacating the premises on 25th June 2021. The Respondent proceeded on the basis that the property would be vacant thereafter. The Applicant, however, vacated the premises on 18th June 2021;
 - d) The tenancy ended on 18 June 2021;
 - e) The application to the Tribunal was made on 7 July 2021. That was within three months of the date of termination of the tenancy and was, therefore, timeous;
 - f) The tenancy deposit was never lodged with an approved tenancy deposit scheme;

- g) Following the termination of the tenancy John Mitchell returned £375 of the deposit to the Applicant;
- h) The Respondent, John Mitchell, breached the TDS Regs by failing to lodge the deposit funds with an approved scheme;
- i) The Parties agreed that the penalty to be imposed should be £125.00;

REASONS FOR DECISION

- 18. The Respondent was clearly in breach of the TDS Regulations;
- 19. He is, however, an inexperienced landlord and appears to not have fully appreciated the existence of the TDS Regs;
- 20. While he retained funds from the deposit, he did so for what he considered to be good reason arising from confusion in relation to the end date of what was clearly a short tenancy entered in to with good motives. The Applicant accepted that she had given an indication that she would remove herself on a specified date but then moved out one week earlier, giving credence to the Respondents belief;
- 21. The Applicant was content with an order for payment of the sum of £125.00 and both Parties agreed that the Tribunal should impose a penalty in that amount.

DECISION

The Tribunal granted an order against the Respondent for payment of the sum of ONE HUNDRED AND TWENTY FIVE POUNDS (£125.00) STERLING to the Applicant

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.

Virgil Crawford

17 December 2021

Legal Member/Chair

Date