



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

Chamber Ref: FTS/HPC/PR/22/1145

Re: Property at Static 3, Croft 7, Ruisarie Beauly, IV4 7AJ ("the Property")

Parties:

Mr Jason Christie, 2 Old Distillery, Dingwall, Highland, IV15 9XE ("the Applicant")

Mr Nigel Noble, Croft 7, Ruisarie Beauly, IV4 7AJ ("the Respondent")

Tribunal Members:

Virgil Crawford (Legal Member)

Decision (in absence of the Applicant)

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

BACKGROUND

1. The Applicant presented an application to the Tribunal seeking that a penalty be imposed upon the Respondent for failing to comply with the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the TDS Regs");
2. A previous Case Management Discussion had been held on 8th July 2022. At that Case Management Discussion the position of the Parties and the Tribunal was as is set out in the following paragraphs;
3. The Applicant asserted that a Tenancy Deposit of £400 had been paid and that this had never been lodged with approved scheme;
4. The Respondent disputed that a Tenancy Deposit had been paid. The Respondent lodged written submissions in which it was indicated that the monthly rental payment to be paid was £500 and that a tenancy deposit of £500 was to be paid also;

5. The start date of the tenancy was 1st December 2021;
6. The Applicant produced a screen print of a bank transaction showing a payment of £400 on 22nd November 2021 with a further payment of £400 on 26th November 2021. The Applicant submitted that one of these payments was a tenancy deposit;
7. The Respondent advised that no tenancy deposit had ever been paid. The Respondent's position is that the payment received on 22nd November 2021 was payment of the rent due for December 2021. The payment received on 26th November 2021 was, in fact, the rent due for January 2021 which was paid significantly in advance, apparently because the Applicant had won money "on the football" so was in a position to pay that early. It was noted by the Respondent that each of these payments was, in fact, less than it should have been as the rent payable was £500 per month;
8. At the Case Management Discussion the Applicant was not present but was represented by Mrs Fiona Rodgers of Citizens Advice Bureau. She accepted that it would be of assistance to the Tribunal to have further bank statements showing further payments made by the Applicant to assist the Tribunal in determining whether or not there had been a deposit paid. It was noted that, in relation to the two payments which were evidenced, those being the payments on 22nd and 26th November 2021, both were marked as being "rent" on the bank screen print provided;
9. Mrs Rosemary McLeod, who represented the Respondent (the Respondent Nigel Noble was on the call but indicated that he was hard of hearing and wished Mrs McLeod to represent his interests) agreed that it would be of interest to the Tribunal also to receive further bank statements showing payments received and, in addition, screenshots of text messages and any e-mails in which the payment on 26th November 2021 was explained by the Applicant as being early payment of the January rent;
10. In the circumstances, all parties were agreed that it would be appropriate for the Case Management Discussion to be continued to enable this additional information/evidence to be provided to the Tribunal. The Tribunal, of course, requires to determine whether or not a deposit was paid and that was clearly in issue and the further information referred to will assist the Tribunal in determining that matter;
11. Mrs Rodgers, on behalf of the Applicant, also suggested that, as she understood it, Mr Christie may have undertaken work at the Property which was done in lieu of rental payments being made. Mr Christie was not present at the Case Management Discussion so she was unable to advance that particular submission further at this stage although, again, further information about that can be provided. In the circumstances, the Case Management Discussion was continued to enable both parties to provide further information/evidence to the Tribunal to enable it to determine whether or not a tenancy deposit was paid;
12. The Tribunal issued a direction to the Parties requiring the Parties to provide the following information:-

"The Applicant is required to provide:

1. *Copy bank statements from November and December 2021 and January, February and March 2022 showing any payments made by the Applicant to the Respondent in relation to the Property;*
2. *Details of any work undertaken at or to the property by the*

Applicant, together with proof of said work and any supporting vouching/documentation in relation to the cost of the same;

3. *Copies of any correspondence – to include screenshots of text messages – between the Parties in which it may have been agreed that work was undertaken in lieu of payment of rent or a tenancy deposit;*

The Respondent is required to provide:

1. *Copies of bank statements showing payments received from the Respondent in the period from November and December 2021 and January, February and March 2022 showing payments received from the Applicant in relation to the Property;*
 2. *Screenshots of text messages and copies of any e mails or other correspondence between the parties in relation to the nature or purpose of payments received by the Respondent from the Applicant, in particular, screenshots of any messages between the Parties in relation to the payment of £400 made by the Applicant to the Respondent on 26th November 2021;”*
13. A further Case Management Discussion was assigned for 26 August 2022 at 10am;
14. The Applicant, via his representative, submitted the following in answer to the Direction:-
- bank statements (which had previously been provided with the original application), showing the two payments of £400 referred to above, together with a comment that the Applicant had been unable to provide subsequent bank statements as directed;
 - screenshots of what were apparently “betting statements” designed to show the Applicant won £1,031.81 between 11th and 13th December 2021 (presumably to disprove the suggestion he had won money “on the football” during November 2021),
 - photographs, the relevance of which were not clear,
 - a screenshot of text messages in which one message from the Applicant requested return of the deposit claimed to have been paid with a reply from Beauly Construction (which appears to be a trading name of the Respondent) requesting address details for the Applicant to enable an invoice to be sent for money presumably due by the Applicant to the Respondent,
 - an invoice dated 26 November 2021 to the Applicant from the Respondent, detailing a sum of £160.00 being due by the Applicant to the Respondent;

THE CASE MANAGEMENT DISCUSSION

15. The Respondent participated in the Case Management Discussion. He was again represented by Mrs Rosemary McLeod. The Applicant did not participate. At the previous case management discussion on 8th July 2022 the

Applicant was represented by Mrs Fiona Rodgers of Citizens Advice Bureau. She had submitted information and documents to the Tribunal in answer to the Direction previously issued. She did not participate in the Case Management Discussion. The Tribunal telephoned Citizens Advice Bureau, Inverness to enquire as to whether there was any difficulty. The information provided to the Tribunal Clerk was that Mrs Rodgers was within the building and that a message would be passed to her. The Tribunal asked that she be advised that the Case Management Discussion was commencing and she could join in. She did not do so;

16. The Tribunal was satisfied that the Applicant had received notice of the date and time of the Case Management Discussion. The Applicant had clearly received the Direction which had previously been issued also and had responded to that. In the circumstances, the Tribunal being satisfied in terms of Rule 24 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 that the Applicant had received intimation of the date and time of the Case Management Discussion and considered that it was appropriate to proceed with the Case Management Discussion in the absence of the Applicant in accordance with Rule 29 of said Regulations;
17. Mrs McLeod, on behalf of the Respondent, advised that he had not responded to the Direction issued as all relevant information requested from them had previously been submitted in advance of the Case Management Discussion held on 8th July 2022. Previous bank statements had been provided showing the two payments of £400 in November 2021 with further bank statements for January and February showing that a further payment of £400 was made on 24th January 2022 but advising that that payment had been returned as, at that point, the Respondent simply wished the Applicant to remove himself from the Property. It was maintained that no tenancy deposit had been paid;
18. No text messages nor other correspondence had been provided tending to show any agreement between the Parties to the effect that there had been an agreement that the Applicant would undertake work at the Property in return for a reduction in rent or any other consideration as, quite simply, there was no such agreement ever entered into;
19. Having regard to the information available to the Tribunal, the fact that the information and documentation provided by the Applicant in response to the Direction previously issued did not appear to address any of the issues raised by the Applicant on the previous occasion, and the fact that neither the Applicant nor his representatives participated in the Case Management Discussion to move the Tribunal to grant any order for payment or to request that a hearing be assigned, the Tribunal concluded that the application should be dismissed;

DECISION

The Tribunal dismissed the application for want of insistence.

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

26 August 2022

Legal Member/Chair

Date