

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 71 (1) of the Private Housing (Tenancies) (Scotland) Act 2016 and under the Tenancy Deposit Schemes (Scotland) Regulations 2011 “The Regulations”

Chamber Ref: FTS/HPC/PR/22/1216 and FTS/HPC/CV/22/1529

Re: Property at 46c KING STREET, STENHOUSEMUIR, FALKIRK, FK5 4HE (“the Property”)

Parties:

Miss Kira Bampton, Miss EIMEAR BUCHANAN, FLAT 2 9 CROOKSTON COURT, LARBERT, FK5 4XE; 2 CADELL LOAN, DOUNE, FK16 6BD (“the Applicant”)

MITCHELLS Asset Management Ltd, 604 ALEXANDRA PARADE, DENNISTOUN, GLASGOW, G31 3BS (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”), in respect of the Application with reference HPC/PR/22/1216, decided to grant the Application and made an order that the Respondent pays the Applicants the sum of £3,000.00 with interest running on that sum at the rate of 5 per cent from today’s date until payment

In respect of Application with reference FTS/HPC/CV/22/1529, the Tribunal granted the Application and made a Payment Order in favour of the Applicants against the Respondent in the sum of £350.00 with interest running on that sum at the rate of 5 per cent from today’s date until payment.

Background

In Application with reference FTS/HPC/CV/22/1529, the Applicants seek a Payment Order in recompense for a deposit said to have been paid to the Respondent pursuant to a tenancy between the parties and said to have been retained in part without legal cause. The Application seeks the return of the sum of £1,000.00 but the Applicants position is that the sum of £650.00 has now been returned leaving a balance due of £350.00.

In Application with reference HPC/PR/22/1216, the Applicants seek an award under the Regulations for the non-registration of this same deposit with an approved scheme as required by the Regulations.

A Case Management Discussion (CMD) had taken place in respect of both Applications on 18 October 2022. The Applicants had appeared at that CMD. The Respondent was not represented. Case Management Orders were made in the form of Directions on both parties and the Applications had been continued to a Hearing. The Applicants complied with the Directions made. The Respondent did not.

The Hearing

The Applications called for a Hearing by conference call at 10 am on 24 January 2023. The Applicants were present and the Respondent was again unrepresented. The details of the Hearings and information about how to join the conference call had been competently served on the Respondent. Accordingly, the Tribunal proceeded in the absence of any representation on behalf of the Respondent. The Tribunal had before it both Applications, a copy of the tenancy agreement and some relevant communications between the parties submitted by the Applicants.

The Tribunal decided to hear from the Applicants in a flexible manner and asked questions directly to illicit evidence. Having done so and having considered both Applications, the Tribunal made the following findings in fact.

- I. *The parties entered into a tenancy agreement whereby the Respondent let the Property to the Applicants on a Private Residential Tenancy which commenced on 2 April 2021;*
- II. *The Applicants paid the sum of £1,650.00 to the Respondent on 2 April 2021. This sum was made up of an initial rental payment of £650.00 together with a deposit of £1,000.00 which the tenancy agreement explicitly describes as: "On this occasion the tenant has asked the landlord to source a furniture pack as all our properties come unfurnished-and this has been sourced independently through a third party for these tenants. This firm charge a holding deposit for furniture of £1,000.00. This will be held with them and returned in full less any*

defects to the furniture and property. The cost of this furniture pack is £25.00 per month and this will be added on to the rent."

- III. *This sum of £1,000.00 is properly to be construed as a deposit within the meaning of s120 of the Housing (Scotland) Act 2006;*
- IV. *The Respondent failed to register this deposit with an approved scheme as required by Regulation 3 of the Regulations.*
- V. *The Respondents left the Property on 1 May 2022. They asked for their deposit back and liaised with someone called Helen who appeared to work for the Respondent in an office. The Applicants did not receive their money back.*
- VI. *On 6 July 2022, "Helen" emailed the Applicants and made clear reference to treating the sums held by the Respondent as a general deposit and advised the Applicants that sums would be returned to them less a "debt owed on the invoice for the final repairs and damages to the property also the replacement keys etc."*
- VII. *On or around 6 or 7 July 2022 the Applicants received the sum of £650.00 back from the Respondent with no explanation as to how this sum had been calculated.*
- VIII. *The Respondent has breached their duties in respect of Regulation 3 of the Regulations;*
- IX. *The First Applicant, Ms Bampton, is 24 years of age and is employed as a Registered Nurse at Forth Valley Royal Hospital in Larbert. The Second Applicant, Ms Buchanan is 27 years of age and also employed as a Registered Nurse at Forth Valley Royal Hospital in Larbert.*
- X. *Whilst in the Property, both Applicants discovered that they were improperly being charged electricity for another property next door which had been hooked up to their own electricity meter. They had cause to have a Scottish Gas engineer attend the Property who advised them that the system in the Property was illegal and he phoned the police as he felt it necessary to do so immediately;*
- XI. *The Applicants were left with a hugely inflated electricity bill for which they should never have been solely legally responsible;*
- XII. *The Applicants have received no cooperation from the Respondent in resolving this difficulty. Both Respondents have suffered financial hardship as a result of not receiving their deposit back timeously;*

XIII. *There are no mitigating factors for the Tribunal to take into account in assessing what award, if any, to make under Regulation 10 of the Regulations;*

XIV. *The sum of £350.00 is lawfully due by the Respondent to the Applicants but remains unpaid;*

Having made the above findings in fact, the Tribunal considered that the sum of £350.00 now sought under FTS/HPC/CV/22/1529 was lawfully due for payment but remained unpaid. Accordingly, the Tribunal decided to grant a Payment Order against the Respondent in favour of the Applicant in the sum of £350.00 and ordered that interest shall run on that sum at the rate of 5% from today's date until payment.

In respect of the Application with reference HPC/PR/22/1216, the Tribunal considered the circumstances to amount to an egregious breach of the Respondent's duties under the Regulations. Considering the full facts and circumstances of the case, and even discounting the allegations against the Respondent regarding the electrics of the Property, the Tribunal considered this is an appropriate situation to make the maximum order available to the Tribunal.

Accordingly, The Tribunal decided to grant the Application and made an order that the Respondent pays the Applicants the sum of £3,000.00 with interest running on that sum at the rate of 5 per cent from today's date until payment

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.

Andrew McLaughlin

Legal Member/Chair

24 January 2023

Date