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 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 and section 71 of the Private Housing (Tenancies)(Scotland) Act 2016

Chamber Ref: FTS/HPC/PR/20/2258; /CV/20/2461 and PR/20/2326

Re: Property at Flat 5, 22 Mavisbank Gardens, Glasgow, G51 1HG ("the Property")

Parties:

Mr Mukund Tripathi, Mrs Ashwini Patil, Flat 5 1/2, 12 Riverview Place, Glasgow, G5 8EH ("the Applicant")

Mr Ashish Tiwari, Flat 2/11, 63 Miller Street, Glasgow G1 1EB ("the Respondent")

Tribunal Members:

John McHugh (Legal Member) and Helen Barclay (Ordinary (Housing) Member)

Decision

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

1 The Respondent is not obliged to repay any sums which were paid to him by the Applicants in respect of Council Tax.

2 The Respondent has failed to comply with his duty under Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 and should be ordered to pay the Applicants the sum of £2000.

3 The Respondent has failed to return the Applicants' deposit of £825 and should now do so under deduction of the sum of £136 in respect of an agreed repair cost.

Background

The Applicants were the tenant and the Second Respondent the landlord under a private residential tenancy of the Property between September 2019 and July 2020.

No written tenancy agreement exists.

The Applicants complain that the Respondent has: taken payments towards Council Tax from them but failed to account to the Council or otherwise left the Applicants at a disadvantage in respect of Council Tax discounts; failed to return their deposit; and failed to place their deposit in an approved scheme in accordance with his obligations under Regulation 3 of the 2011 Regulations.

The Case Management Discussion

A Case Management Discussion ("CMD") took place by telephone conference on 29 April 2021. The Applicants were present. The Respondent was not. He had made written representations explaining he was in India but setting out a potential defence to the applications by the Applicants. A Hearing was accordingly fixed.

The Tribunal made a direction on the same day as follows:

"The Tribunal having considered parties submissions at the Case Management Discussion on 29 April 2021 directs the Respondent by no later than 7 June 2021 to:

1 Provide to the Tribunal his home address.

2 Provide to the Tribunal all communications between him and Glasgow City Council concerning the Applicants relating to Council Tax.

3 Provide to the Tribunal evidence that he has paid all sums received by him as contributions towards Council Tax from the Applicants to the Council.

4 Provide to the Tribunal a copy of all communications between him and the Applicants relating to terms of the tenancy including on the topic of the requirement for a deposit."

The Respondent has since:

1 provided an address.

2 & 3 provided copied his bank statements evidencing payment of the Council Tax relating to the Property during the currency of the tenancy.

4 provided certain correspondence.

Findings in Fact

The Applicants were the tenant and the Respondent the landlord under a private residential tenancy in respect of the Property.

The tenancy began on 7 September 2019 and ended on 31 July 2020.

The Applicant paid to the Respondent a deposit of £825 on 4 October 2019.

The Respondent has refused to return the deposit.

The deposit should have been placed by the Respondent into an approved scheme.

The deposit was not placed into an approved scheme.

The Applicants paid to the Respondent the sum of £228 per month towards Council Tax during the months of November 2019 to July 2020.

The Respondent registered the Applicants as resident at the Property but non-liable for Council Tax.

The Respondent has paid the sums given to him by the Applicants to the Council as Council Tax due in respect of the Property

Reasons for Decision

Council Tax (2326)

Parties agree that the Applicants paid £228 per month to the Respondent between the months of November 2019 and July 2020 on the basis that he would then make payment on their behalf to the Council of this amount as Council Tax. The Respondent has paid the sums given to him by the Applicants to the Council as Council Tax due in respect of the Property. The Applicants were initially registered by the Respondent with the Council as non-liable persons in respect of Council Tax. On 10 March 2021, the Respondent for the first time made the Council aware of the Applicant's period of occupation of the Property.

The Respondent explained that he had initially thought that the arrangement for the occupation of the property was going to be for a short time, so to avoid the trouble associated with registering the Applicants as the new occupants liable for Council Tax, he had simply kept the account in his own name.

Given that all payments made by the Applicants towards Council Tax appear to have been forwarded by him to the Council, the Applicants do not, on the face of it, appear to have a basis to seek repayment of those sums. In fact, the Respondent appears from his bank statements to have paid marginally more for the months of April (£235.74) and May-July 2020 (£237 each) ie a total of £34.74. However, the Applicants observe that the Council Tax charged is charged for a 12 month period but over 10 months. By paying the full amount for each month of their occupation they have overpaid since they cannot claim back the overpayment from the Council.

The Applicants' figures show that they paid a total of £2052 to the Respondent in respect of Council Tax in nine payments of £228. However, they were in occupation for just under eleven months. Neither party was able to provide any exact figure as to how the discount for the annual figure should be calculated. It appears however to the Tribunal that the effect of the Respondent's overpayment and the fact that the Applicants made only nine payments would be likely to extinguish any refund which might be due to them to allow for the 10/12 month charging argument.

The Applicants appear to have no loss and so there is no basis for payment of any sums to them.

Deposit (2461 & 2258)

The Applicants claim that they paid to the Respondent a deposit of £825 on 4 October 2020.

In its Notes on the Case Management Discussion dated 29 April 2021 the Tribunal noted:

"*The Respondent's written submission indicates that he has no recollection or record of having received a deposit at all.*

The Applicants appear to have provided prima facie evidence of their payment of the deposit whereas the response from the Respondent on this issue has been very brief and somewhat vague. The Respondent will require to be in a position to provide a more detailed explanation and, where possible, relevant evidence at the hearing."

In his written submission for this Hearing, the Respondent advises that he has "no recollection" of receiving a deposit from the Applicants. He states that his bank account statements do not show receipt of the deposit. He has produced a print-out apparently extracted from his bank statements which, he says, show all payments received from the Applicants.

At the hearing, the Tribunal observed that there was correspondence of 28 August and 17 and 18 September 2020 passing between the parties in relation to the electricity bill and the washing machine. In that correspondence, the Applicants specifically raised the question of the deposit. The Respondent did not take issue with that at the time. This is consistent with a deposit having been paid and entirely inconsistent with no deposit having been paid. He said that he had not checked his records at that time but had thought that he would not have asked for a deposit but did not want to say so until he had checked the position.

The parties agree that they had been introduced by a mutual friend but had only themselves met for the first time on 1 September 2019. It seemed unlikely to the Tribunal that the Respondent would not have asked for a deposit since he clearly did not know the Applicants well at the start of the tenancy. The Respondent advised that he had given the Applicants use of his credit card to buy things which they need and that this demonstrated the level of trust he had in them and that he would not have asked for a deposit. On questioning however, his position was that he could not remember who he had given the card to and that it may have been the parties' mutual friend who had used it to buy things for the Applicants. The Respondent confirmed that it was the mutual friend who had used a card to buy things they needed and that they had repaid that mutual friend. They did not know whether the mutual friend had used the Respondent's credit card or his own.

The Applicants have set out the detail of all payments made and have advised that there was a cash payment to the Respondent of £750 referred to in WhatsApp messages which would not show in any bank statements. That requires to be taken account of in any calculations. The Respondent replied that he did not recall ever receiving cash from the Applicants.

We find that the Applicants did make payment of a deposit of £825 to the Respondent. We prefer the evidence of the Applicants on this question to that of the Respondent. We find the Applicants to be credible. We find that the Respondent's position incredible.

The Respondent has raised in his written submission some new questions where he seems to seek the Tribunal making formal findings in his favour. He claims (as noted above in relation to the deposit) that the Applicants used his credit card to make purchases from Morrisons and Ikea. We do not find that relevant to the current Applications (other than as evidence in relation to the deposit question as noted above) and make no finding on this issue. He also claims that the Applicants were provided with the keys to the Property after the tenancy had ended to allow them to collect items left behind and to return his property. He alleges a delay of a few days in the keys being returned to him. We find this to be irrelevant to the Applications.

The Respondent complains that an electricity bill was left unpaid. The electricity supplier was Spark. The Respondent had kept the account in his name. He paid Spark £60 per month from his account by direct debit. The Applicants had paid him varying amounts. The Respondent complains that the Applicants failed to take a meter reading when they left. He claims that they submitted only two readings to

Spark so that a bill could not be generated. He advises that there is a third simultaneous reading required from the meter. He does not know the Respondent's actual usage since he can only work this out annually when Spark invite him to make an under or over payment. The Tribunal enquired why the Respondent did not himself take a meter reading when the Applicants moved out (particularly since a new tenant was moving in). The Respondent said that he was prevented from doing so by COVID restrictions.

The Applicants advise that they submitted final readings. They have obtained a bill from Spark which shows as a reading the figures of 32148 and 12459 which match the meter photographs they submitted in evidence. The Respondent notes that the Spark bill records these as estimates rather than actual readings but we accept the evidence of the Applicants that they took these readings at the end of the tenancy and submitted them,. The Tribunal further notes that the Spark bill records that the account is in credit by £12.47. We find no evidence that any sums were left outstanding in respect of electricity.

The Respondent also complains that the washing machine needed repair. The parties had exchanged messages on this topic before the end of the tenancy. The power button had fallen off the washing machine. The parties' discussion appears to have assumed that the Applicants should be responsible for the repair cost. The Respondent identified that the manufacturer could assess the washing machine for £136. The parties sought a cheaper repair but could not find anyone available. Eventually, the Respondents confirmed that they would be happy to have the Respondent incur the cost of £136 to be paid out of their deposit.

In the circumstances, in relation to the Application for return of the deposit, we find that this Application should be granted under deduction of the agreed washing machine related cost of £136.

There is no dispute that the deposit was not placed in an approved scheme and we make a formal finding to that effect.

The Tribunal is obliged in terms of Regulation 10 to make an order requiring the Respondent to make a payment to the Applicant. An aggravating factor is that the deposit remained unprotected for the whole duration of the tenancy and remains so today. A further aggravating factor is that the Respondent has falsely maintained before the tribunal that no deposit was received or that least that he had no recollection of it. The Tribunal regards this case as being at the most serious end of the scale and finds an award of £2000 to be appropriate.

Decision

The Respondent does not require to repay any sums which were paid to him by the Applicants in respect of Council Tax.

The Respondent should be ordered to pay to the Applicants:

-the sum of £689 in respect of repayment of the deposit

- the sum of £2000 in terms of Regulation 10 of the 2011 Regulations in respect of the failure to place the deposit in an approved scheme

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.

John McHugh
Legal Member

Date
21 June 2021

[redacted]