



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

**Chamber Ref: FTS/HPC/PR/21/0681**

**Re: Property at 48 Victoria Parade, Dunoon, PA23 7HU (“the Property”)**

**Parties:**

**Mr Robert Dunlop, Mrs Anne Dunlop, Wellmeadow, 3 Blair Lane, Kirn, Dunoon, PA23 8EU; 19 Sandra Gardens, Dunoon, PA23 8NU (“the Applicant”)**

**Stewart Wilson, Ms Jennifer Hirsch, 18 Nelson Street, Dunoon, PA23 7EL; 18 Nelson Street, Dunoon, PA23 8EL (“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 Applicants were previously the tenants of the property with the Respondents being the Landlords;
2. The tenancy commenced in June 2013 at which point a tenancy deposit of £575 was paid by the Applicants to the Respondents;
3. The tenancy deposit was not lodged with an approved scheme until December 2020;
4. The tenancy ended on 10 December 2020;
5. The Applicants presented an Application seeking a penalty be imposed upon the Respondents due to their failure to lodge the tenancy deposit timeously with an approved scheme, said Application being presented to the Tribunal on 18 March 2021;

**THE CASE MANAGEMENT DISCUSSION**

6. A Case Management Discussions was held on 21 June 2021 at 10am, that being done by Teleconference. The Applicants both attended and were represented by Mr I Tyson. The Respondents did not attend personally but were represented by Miss Hoey, Trainee Solicitor, Messrs Aberdein Considine Solicitors, Edinburgh;
7. There had been a previous Case Management Discussion on 7 May 2021. On that occasion no decision could be made by the Tribunal as one of the Respondents had not been convened as a party to the proceedings and the proceedings had not been intimated on that Respondent. As a result, the Case Management Discussion was adjourned with the further Case Management Discussion taking place on 21 June 2021;
8. At the outset of the Case Management Discussion on 21 June 2021 the Legal Member raised an issue in relation to the date of termination of the tenancy. In proceedings of this nature the date of termination of the tenancy is, of course, of significance as, in terms of Regulation 9(2) of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the TDS Regs”) any Application to the Tribunal requires to be made within three months of the date of termination of the tenancy;
9. The Tribunal was in possession of a notice served by the Applicants upon the Respondents, dated 10 November 2020, stating that they were terminating the tenancy with effect from 10 December 2020;
10. Mr Tyson, on behalf of the Applicants asserted that the end date of the tenancy was, in fact, 18 December 2020 and that the tenancy agreement had been “held over” until then. He stated that there was a verbal agreement entered into between the parties on 10 December 2020 whereby it was agreed that the tenancy would continue until 18 December 2020 due to the fact that the Applicants had been unable to remove all of their personal possessions from the property by 10 December 2020;
11. Miss Hoey, on behalf of the Respondents, did not accept that. She maintained that while, as a matter of fact, the Applicants retained a set of keys for the property until 18 December 2020, that was not because there had been agreement that the tenancy had continued. Rather, that was due to the practical issue which had arisen whereby, as at the end date of the tenancy, the Applicants had not removed all of their personal possessions and were stating they were unable to do so. The tenancy had ended on 10 December 2020 but arrangements still required to be made for the Property to be emptied;
12. Miss Hoey made reference to a screenshot of a text message by the Respondents to the Applicants on 10 December 2020. This had not previously been provided to the Tribunal. The Tribunal also made enquiry in relation to letters dated 16 December 2020 and 18

December 2020 apparently forwarded by Miss Hoey's legal firm to the Applicants. These were referred to in a separate letter dated 31 December 2020 from Mrs Anne Dunlop, the Second Applicant, to Miss Hoey in which reference was made to these two pieces of correspondence. Again, these had not been provided to the Tribunal;

13. The Tribunal enquired as to whether or not Miss Hoey was wishing to submit those documents and in a position to do so. She confirmed that she was and, as a result, the Tribunal adjourned for a period of approximately 15 minutes to enable those documents to be forwarded to the Tribunal and copied to the Applicants and to Mr Tyson on behalf of the Applicants;

14. When the Tribunal reconvened it noted the following:-

- a. In the text message (undated on the screenshot forwarded but accepted to have been sent on 10 December 2020) the Respondents stated:-

***"To follow up on our conversation tonight.  
We have agreed a further 7 days are required by you  
to remove all of your belongings from the house.  
We have agreed to meet at the house each day to  
check on the progress.  
We have agreed your tenancy ended today but you  
will have a set of keys for access for the next 7 days  
and you will provide your bank details tonight so  
that we can return £575 (one months rent).  
Stewart and Jennifer"***

- b. In the letter dated 16 December 2020 forwarded by Miss Hoey to the Applicants it is stated:-

***"In terms of your Notice dated 10 November 2020 the  
tenancy has been terminated by you with effect from  
10 December 2020. The tenancy is now at an end and  
you have ceased to occupy the property.  
You retain a set of keys to the property for the sole  
purpose of clearing the property of your belongings.  
Our clients are prepared to allow you until 17  
December 2020 to finish clearing the property. The  
keys should be returned to the Landlords no later  
than 12pm on 18 December 2020."***

- c. In the e-mail dated 18 December 2020 forwarded by Miss Hoey to the Applicants it is stated:-

***"We refer to the above matter in which we are  
instructed by your Landlords."***

***Please arrange for the keys to be posted through our client's letterbox no later than 12pm today 18 December 2020 per our previous correspondence. We have been passed your e-mail correspondence from 16 December 2020 stating that the earliest you can have a removal arranged is Tuesday 22 December 2020 with Quick n Easy Transport Ltd. We have discussed matters with the removal company and have been informed no formal booking has been completed for Tuesday 22 December 2020. Our clients are willing to allow you until 5pm on 31 December 2020 for Quick n Easy Transport Ltd, or any other removal company instructed by you, to carry out the removal of your belongings. When you have a removal booked and confirmed please inform us of the details. Our clients will arrange to attend at the property to give access for the removal company, up to 5pm on 31 December 2020."***

- d. In a letter dated 31 December 2020 forwarded by Mrs Anne Dunlop to Miss Hoey, on behalf of the Respondents, it is stated

***"The reason for the delay in removing our goods was explained to your clients with our apologies. Several factors played a part....."***

15. Miss Hoey also advised that no rent was charged to the Applicants after 10 December 2020. Mr Tyson advised that the Applicants had offered to pay rent but that offer appears not to have been accepted;
16. The Tribunal raised with Mr Tyson the issue of the date of termination of the tenancy on the basis that the documentation provided appeared to contradict the suggestion that the tenancy had been "held over". The text message and the letter dated 16 December 2020 both made it clear that the tenancy ended on 10 December 2020 but an indulgence was being allowed thereafter to enable personal possessions to be removed. No rent had been charged for that period of time on the basis that the tenancy was ended also;
17. Mr Tyson maintained that his understanding was that there had been a verbal agreement that the tenancy had been extended but he had no documentary proof in relation to that;
18. The Tribunal intimated that a Hearing could be assigned at which the Applicants would be able to give evidence in relation to any verbal agreement they sought to rely on and the Respondents would

also be entitled to give evidence or have further evidence led on their behalf;

19. The Tribunal enquired as to whether the Applicants wished a Hearing to be assigned with a view to evidence being led in relation to the terms of any agreement about the tenancy being extended beyond 10 December 2020. The Tribunal allowed a further adjournment to enable the Applicants and Mr Tyson to consider that matter;
20. After the adjournment, Mr Tyson advised that the Applicants were content for the Tribunal to make a decision at the Case Management Discussion on the basis of the information before it. He indicated at that stage that there had been a difficulty in presenting the Application to the Tribunal because of Coronavirus restrictions, difficulty in obtaining advice from Citizen's Advice and difficulty in locating the correct forms for that purpose. He also pointed out that the tenancy deposit had not, in fact, been lodged until after 10 December 2020. He also pointed out that the Application to the Tribunal appears to have been accepted by the Tribunal and the Applicants and he were proceeding on the assumption that it was a competent Application;

## **FINDINGS IN FACT**

21. The Tribunal found the following facts to be admitted or proved;
  - a. The parties entered into a Lease of the Property, said Lease commencing on 22 June 2013;
  - b. A tenancy deposit of £575 was paid by the Applicants to the Respondents at the commencement of the tenancy;
  - c. The tenancy deposit was not lodged with an approved scheme until after 10 December 2020;
  - d. The tenancy ended on 10 December 2020;
  - e. The Applicants presented their Application to the Tribunal on 18 March 2021;
  - f. The date on which the Application was presented to the Tribunal was more than 3 months after the date of termination of the tenancy and, as such, was not in compliance with the requirements of Regulation 9(2) of the TDS Regs;

## **REASONS FOR DECISION**

22. While it was accepted that the tenancy deposit had not been lodged with an approved scheme at the commencement of the

tenancy, the starting point of any consideration of an application in terms of the TDS Regs is to consider it competency;

23. For an Application be competent it is necessary in terms of Regulation 9(2) that it be presented to the Tribunal within 3 months of the termination of the tenancy;
24. While it may be unfortunate that the issue of the date of termination of the tenancy was not raised by the Tribunal previously, it remained an essential matter of fact and law which required to be determined to enable the Tribunal to consider whether it was in a position to impose a penalty in terms of the TDS Regs for the failure to timeously lodge the tenancy deposit with an approved scheme;
25. While Mr Tyson, on behalf of the Applicants, argued that the tenancy did not end until 18 December 2020, that being the date on which the keys were returned, the Tribunal did not accept that the return of the keys was the crucial factor in determining the end date of the tenancy;
26. While the Applicants argued that there had been a verbal agreement between the parties that the tenancy would continue to 18 December 2020, that assertion was disputed on behalf of the Respondents and was contradicted by the correspondence – text message and Solicitors letter – provided to the Tribunal. There was no dispute on behalf of the Applicants that the text message had been received nor that the letter from the Respondents solicitors dated 16 December 2020 had been received. Indeed, that letter of 16 December 2020 had been responded to by the Applicants;
27. The Applicants had themselves determined the date of termination of the tenancy in their Notice dated 10 November 2020 forwarded to the Respondents. The Applicants had thereafter, in the correspondence dated 31 December 2020, provided a reason for the delay in removing their goods;
28. It was accepted by the Applicants that no rent was charged by the Respondents after 10 December 2020. While Mr Tyson advised that the Applicants had offered to pay rent, that offer, in itself, does not confirm a continuation of the tenancy. The refusal to accept rent, rather, confirms that the tenancy was, indeed, at an end;
29. The Applicants, having been afforded an opportunity to consider their position and to consider whether or not they wished a Hearing to lead any evidence in relation to the matter, indicated through their representative, that they did not wish a Hearing to be assigned for that purpose and wished the Tribunal to make a decision on the information before it. That being so, the Tribunal had little difficulty in concluding that the tenancy ended on 10 December 2020;

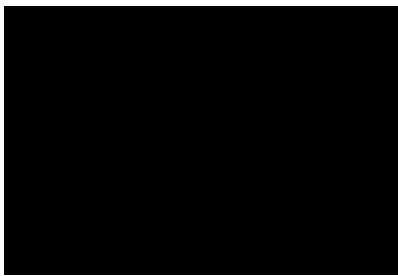
30. The Tribunal, having concluded that the tenancy ended on 10 December 2020, and the application by the Applicants for a penalty to be imposed in terms of the TDS Regulations not being received until 18 March 2021, concluded that the Application was incompetent;

## **DECISION**

The Tribunal dismissed the application as incompetent.

### **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.



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**Legal Member/Chair**

**21 June 2021**

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**Date**