



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”) and Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/PR/20/1096

Re: Property at Flat 0/2, 46, Nithsdale Street, Glasgow, G41 2PY (“the Property”)

Parties:

Mr. Tristan Wilson, residing at 29, Sparry Lane, Carharrack, Redruth, Cornwall, TR16 5SJ (“the Applicant”)

Ms. Shaheen Ullah, residing at Flat 0/2, 46, Nithsdale Street, Glasgow, G41 2PY (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) dismissed the Application.

Background

1. By application received on 29 April 2020 (“the Application”), the Applicant made an application to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Chamber”) for a determination and an order in terms of Rule 103 of the Rules and Regulation 9 of the Regulations. The Application comprised an application form, copy tenancy agreement commencing on 6 March 2020 stating that the deposit would be lodged with SafeDeposits Scotland, evidence of payment of a deposit of £400.00 by him on 19 February 2020 and

confirmation from SafeDeposits Scotland on 1 April 2020 that they do not hold the deposit.

2. On 5 May 2020, the Chamber President accepted the Application and a Case Management Discussion (“CMD”) was fixed for 18 August 2020 at 10.00 by telephone conference call. The Application was intimated to the Respondent by service on the Chamber website. The CMD was intimated to both Parties.
3. The CMD took place on 18 August 2020 at 10.00. The Applicant took part. The Respondent was not present and so did not take part. The Tribunal explained the role of the Tribunal and its powers within the Scottish Courts Administration, its role in respect of residential tenancies in Scotland and explained the purpose of the Regulations

Summary of Discussion

4. The Tribunal advised the Applicant that it had read and was familiar with all of the background papers.
5. The Applicant advised the Tribunal that he did not wish to be punitive toward the Respondent and only wished return of his deposit.
6. The Tribunal noted that the Applicant had obtained the tenancy via an online letting agency and asked if the Applicant had ever met the Respondent face-to face to which the Applicant responded that the Respondent resided at the Property, occupying the upstairs room. The Applicant stated that he did not know for certain that this was the Respondent’s main residence, but, on questioning by the Tribunal, stated that the Respondent did reside in the Property.
7. The Tribunal advised the Respondent that accommodation shared with a landlord affected the status of a tenancy arrangement and the Tribunal’s jurisdiction and so adjourned the CMD for a short time to have regard to the relevant legislation.
8. The CMD resumed and the Tribunal advised the Applicant that it did not consider that it had jurisdiction as the tenancy is not a relevant tenancy in terms of the Regulation 3 of the Regulations.
9. The Applicant accepted this position and stated that he had been advised this might be the case.

Findings of the Tribunal.

10. From the Application and the CMD, the Tribunal found the following facts to be established on the balance of probabilities: -

- i) There was a tenancy arrangement between the Parties beginning on 6 March 2020;
- ii) The Applicant paid a tenancy deposit of £400.00 to the Respondent;
- iii) No information in respect of lodging the deposit was provided to the Applicant and it was not lodged with SafeDeposits Scotland;
- iv) The Respondent resided in or occupied part of the Property;
- v) The tenancy agreement refers to shared accommodation;
- vi) The Property let was not let for the exclusive use of the Applicant but was let on a shared basis with the Respondent.

Decision of the Tribunal and Reasons for the Decision.

11. The Tribunal had regard to Regulation 3(1) of the Regulations which states:-

“A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy pay the deposit to the scheme administrator of an approved scheme” and to Regulation 3(3) of the Regulations which states:- *“A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement.....(unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.”*

12. The Tribunal had regard to Section 83(6) of the 2004 Act, being the Anti-social behaviour etc (Scotland) Act 2004 which states at Section 83(6) *“.....the use of a house as a dwelling shall be disregarded if...the house is the only or main residence of the relevant person”*. That Act defines the relevant person as *“a person who is not a local authority, a registered social landlord; or Scottish Homes”*

13. Having determined on the balance of probabilities that the Property let was not let for the exclusive use of the Applicant but was let on a shared basis with the Respondent as her only or main residence, and, having regard to the legislation narrated above, the Tribunal determined that tenancy is not a relevant tenancy for the purposes of the Regulations.

14. Accordingly, the Tribunal has no jurisdiction and so the Tribunal dismissed the Application.

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.



Karen Moore
Legal Member/Chair

18th August
Date