



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

**Chamber Ref: FTS/HPC/PR/21/0579**

**Re: Property at 100 Victoria Road, Aberdeen, AB11 9DU (“the Property”)**

**Parties:**

**Miss Shanann Dilbaro, 47 Northway Court, Green Avenue, London, NW7 4PY  
 (“the Applicant”)**

**Mr Andri Ong, 11 Sombre, Harku Vald, Harjumaa, Estonia (“the Respondent”)**

**Tribunal Members:**

**Virgil Crawford (Legal Member) and Melanie Booth (Ordinary Member)**

**Decision (in absence of the Respondent)**

**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 on the Respondent as a result of his failure to lodge a tenancy deposit with an approved scheme;
2. The Applicant rented the property from the Respondent from 18<sup>th</sup> September 2020 until 18<sup>th</sup> December 2020;
3. The deposit of £320.00 was paid by the Applicant to the Respondent. Proof of payment of that amount was provided to the Tribunal;
4. Following the termination of the tenancy the deposit was not paid to the Applicant and it became apparent that it had not been lodged with an approved tenancy deposit scheme;

5. The Applicant presented an application to the Tribunal on 12<sup>th</sup> March 2021 seeking that a penalty be imposed upon the Respondent in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("The TDS Regs");

## **PROCEDURAL HISTORY OF THE CASE**

### **Case Management Discussion On 14 June 2021**

6. A Case Management Discussion was held, by teleconference, on 14 June 2021

7. Both parties participated personally in the Case Management Discussion;

8. The Respondent disputed that the Property had been let to the Applicant and disputed that he had received payment of any tenancy deposit funds nor any rental payments;

9. The Respondent intimated that the Property was let to a different person and had been for a significant period of time. He suggested that the Applicant may have been a sub-tenant but denied that he had previously had any direct contact or agreement with her;

10. The Applicant maintained that she had entered into an agreement with the Respondent. She had met him personally and had spoken to him on the telephone and recognised his voice in the course of the Case Management Discussion;

11. The Respondent suggested that the Lease document produced was not a valid lease as it was not signed. The Applicant, however, maintained that she had agreed the lease by way of email communications;

12. The Applicant had previously produced a bank statement which indicated that a payment of £320.00 had been made to "Andy Ong", the tenancy deposit, by bank transfer during September 2020. The Respondent denied that he had ever received such funds;

13. The Lease detailed the Landlord as being Andri Ong and the letting agent as Antti Ong. The Respondent intimated that he did not know an Antti Ong. The Applicant was unable to advise further in relation to that either as she believed that her dealings in relation to the alleged Lease were with the Respondent;

14. In the circumstances, given that there was a fundamental disagreement between the parties as to whether a Lease existed or whether or not and whether a tenancy deposit had been paid to the Respondent, the Tribunal had no option but to assign a Hearing to determine these matters;

### **Direction Dated 14 June 2021**

15. The Tribunal also issued a direction to the parties requesting that certain information/documentation was provided. This Direction was dated 14 June 2021 and required the Respondent to provide:-

- a. A written note of the basis upon which the Respondent opposes the Application;***

- b. A copy of the Lease the Respondent asserts exists in relation to the property in which a person other than the Applicant is the tenant;*
  - c. A list of any witnesses to be called by the Respondent in relation to the issues in dispute between the parties.*
16. The Respondent did not comply with this Direction;

### **Hearing On 13 August 2021**

17. A Hearing was assigned for 13th August 2021, again to be conducted by teleconference;

18. The Applicant participated in that Hearing. The Respondent did not. The Respondent had, however, previously participated in the Case Management Discussion and the Respondent had also forwarded e mail communication to the Tribunal in answer to submissions and documentation lodged by the Applicant prior to the Hearing;

19. The Applicant had also intimated to the Tribunal that there were two named persons she intended to call as witnesses. It became clear in the course of the Hearing on 13th August, however that the Applicant anticipated that the Tribunal would make arrangements for these witnesses to be available rather than her requiring to have done that. While she indicated that she may be able to contact them to confirm whether they were available to participate on 13th August 2021, the Tribunal did not require that;

20. The Tribunal determined that it was appropriate to adjourn that Hearing and to arrange a further Hearing to be conducted by way of video conference. The Tribunal did so for the following reasons:-

- a. It is clear from the Case Management Discussion and from correspondence received from the Respondent prior to the Hearing that the Respondent maintains that he has not entered into a lease with the Applicant. The Applicant, however, maintains that he has done so, advised that she had met with the Respondent when she assumed occupation of the property and recognised his voice on the telephone at the Case Management Discussion;
- b. The Applicant advised that her witnesses were former flatmates and, again, would be able to identify the Respondent as the person with whom they had entered into a lease agreement;
- c. In the circumstances, given the clear dispute in relation to the identity of the landlord, it was appropriate that the Hearing be conducted by way of video conference in order that, if necessary, the Applicant and any witnesses to be called on her behalf can physically identify the Respondent as the landlord or, alternatively, confirm that he is not the person with whom they had entered into any agreement. Such physical identification would not be possible by way of teleconference;

21. While the Respondent did not participate in the Hearing on 13th August, given that he resides in Estonia, given that he participated in the Case Management Discussion and given that he had been in correspondence with the Tribunal in advance of the Hearing, the Tribunal considered it appropriate to afford him a further opportunity to participate at the adjourned Hearing rather than make a decision in his absence on this occasion.

### **Hearing On 22 October 2021**

22. The case was assigned for a Hearing on 22 October 2021, said Hearing to be conducted by WebEx Video Conferencing;

23. A Hearing was then assigned for 22 October 2021. In advance of that Hearing parties (and indeed the Tribunal members) were required to participate in a test session to ensure that they were able to engage with the WebEx system and to ensure that the Hearing could proceed;

24. On 22 October 2021 the Applicant joined the WebEx Video Conferencing Hearing. The Tribunal members and Tribunal Clerk joined it. The Respondent also joined but was unable to become a participant in the Hearing, the result of that being that while he was able to be heard by the Applicant and the Tribunal members, he was unable to be seen by other Parties;

25. The Tribunal made enquiry with its Technical Support Team in the hope that the difficulty could be resolved. That was not possible on the morning. Separately, however, the Respondent “dropped out” of the Hearing and was no longer involved even by way of audio conferencing;

26. The Tribunal made enquiries as to whether or not the Respondent had participated in the test session previously required. While involved in the Hearing by audio the Respondent advised that he had successfully participated in that. The information subsequently provided to the Tribunal members, however, was that the Respondent attempted a test session but that it failed;

27. Having regard to the background to the case and the need for video conferencing to enable the Applicant and any witnesses called on her behalf to physically identify the Respondent, the Tribunal was unable to proceed on the day, even with the Respondent participating by audio. In the circumstances, the Tribunal concluded that it was appropriate to adjourn the Hearing in the hope that the matter can resolve on the next occasion;

28. The Tribunal stated it would issue a Direction to the Respondent requiring him to participate in a further test session. The Technical Support Team of the Tribunal confirmed they would be able to become involved in that also to provide any assistance necessary to ensure that the Respondent can participate fully and can join any subsequent WebEx Hearing by way of video conferencing;

29. The Applicant commented that, while the Hearing was not proceeding on this day, she was of the view that the person who had joined by audio conferencing was not the same person who had participated in the Case Management Discussion on 14 June 2021. She recognised the voice of that person as the Landlord of the property. The person who she heard by audio on 22 October 2021 was a different person. Those comments were made at the end of the Hearing after the Respondent had “dropped out” but were noted by the Tribunal members;

## **Direction Dated 22 October 2021**

30. Having regard to the concerns about the identity of the Respondent, the Tribunal issued a direction in the following terms:-

***“The tribunal, on its own initiative and for the purpose of making inquiries, give the following Direction to the Applicant/Respondent as to the conduct and progress of this Application in terms of Section 16 of Schedule 1 to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017:***

***The Respondent is required, no later than 12 noon on 5 November 2021 to:-***

- 1. Take part in a test session to ensure compatibility with his computer equipment with the Webex Video Conferencing system for the purposes of a further Hearing in relation to the proceedings;***
- 2. Provide photographic proof of his identity to the Tribunal;***

### **REASON FOR DIRECTION**

***A Webex Video Conferencing Hearing was assigned for 22 October 2021. All participants with the exception of the Respondent were able to join the Webex Video Conferencing Hearing. The Respondent joined but this video facility did not appear to be operating. He could only join by audio.***

***Given the points at issue in the case, it was essential that the Respondent participated by video as identification of him by the Applicant and witnesses was crucial to resolution of the case;***

***The Applicant had previously been requested by the Tribunal to participate in a test session to ensure his ability to participate in a Webex Video Conferencing Hearing. He advised the Tribunal on 22 October 2021 that he had engaged with that process. The information available to the Tribunal, however, was that, while he had attempted a test session it was unsuccessful.***

***The Tribunal requires the Respondent to participate by video conferencing and, in the circumstances, requires him to ensure his ability to do so. The Tribunal has made arrangements for a member of its Technical Support Team to be available to assist with any technical issues arising. The failure of the Respondent to participate in such a test session will frustrate the ability of the Tribunal to fix a further Hearing and will frustrate the ability of the Tribunal to effectively adjudicate on the case. The Tribunal cannot allow the Respondent to frustrate or delays its legal responsibility to deal with the case.***

***A previous calling of the case was held by teleconference. The Applicant intimated that she recognised the voice of the Respondent on the telephone conference. On the day of the Webex Video Conference Hearing, while the video facility of the Respondent did not work, his audio did. The Applicant advised that the voice she heard was a different one from before and she did not believe it was the same person who had participated in the teleconference.***

***In the circumstances, it is essential that the Tribunal can be satisfied as to the identity of the Respondent and that the person who joins the next hearing is, indeed, the correct person.”***

31. The Respondent complied with part 1 of the Direction but failed to comply with part 2;

### **Hearing On 21 January 2021**

32. The Applicant participated in the Hearing by way of WebEx video conferencing. The Respondent did not. While the Respondent, at the Hearing on 22<sup>nd</sup> October 2021, had joined by way of audio call but without a video facility, he did not participate in this hearing at all;

33. The Respondent had participated in the proceedings previously, had received intimation of the Hearing from the Tribunal, had participated in a test session for WebEx video conferencing and had otherwise been in communication with the Tribunal. In the circumstances, the Tribunal was satisfied, in terms of Rule 24 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 that the Respondent had received intimation of the date and time of the hearing and decided it was appropriate to proceed with the hearing in the absence of the Respondent in accordance with Rule 29 of said Regulations;

34. The Applicant had previously made submissions to the Tribunal in relation to her application and provided documentation in support of it. Given that there was no contradictor, the Tribunal concluded that the application was well founded, that a tenancy deposit had been paid, and that it had not been lodged with an approved tenancy deposit scheme;

35. The Tribunal thereafter required to consider the level of penalty to be imposed for the breach of the TDS Regs. The Tribunal imposed the maximum penalty available to it, that being three times the amount of the tenancy deposit, in this case the amount being £960.00;

### **FINDINGS IN FACT**

36. The Tribunal found the following facts to be established:-

- a. The Applicant rented the property from the Respondent from 18<sup>th</sup> September 2020 until 18<sup>th</sup> December 2020;
- b. A deposit of £320.00 was paid by the Applicant to the Respondent;
- c. The deposit funds were not lodged with an approved Tenancy Deposit Scheme;
- d. Following the termination of the tenancy the deposit was not repaid to the Applicant;
- e. The Applicant presented an application to the Tribunal on 12<sup>th</sup> March 2021 seeking that a penalty be imposed upon the Respondent in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011. The application to the Tribunal was timeous;

## **REASONS FOR DECISION**

37. it was clear that there had been a breach of the TDS Regs. In the circumstances, the matter for determination by the Tribunal was the level of penalty to be imposed;

38. When determining the level of penalty to be imposed, the Tribunal had regard to the following factors:-

- a. The fact that there was no reason advanced to the Tribunal for the tenancy deposit not being lodged with an approved scheme;
- b. The tenancy deposit was never returned to the Applicant at the conclusion of the tenancy;
- c. There was no information to suggest that the Respondent had done anything other than deliberately take a deposit which was not returned and not lodged with an approved tenancy deposit scheme;
- d. The Respondent thereafter denied that he was the Landlord or that he had received the deposit funds;
- e. The Respondent delayed the Tribunal proceedings in what appears to have been a clear attempt to avoid an order being made against him;
- f. The Respondent failed to comply, on two separate occasions, with two separate directions issued to him by the Tribunal;
- g. The Respondent failed to participate in the proceedings on two separate occasions;
- h. In all the circumstances the actions of the Respondent in taking the deposit, failing to lodge it, failing to repay it and taking repeated and deliberate steps to frustrate the process by which he was found liable, indicated that this was the type of case which merited a penalty at the highest level.

## **DECISION**

The Tribunal granted an order for payment by the Respondent to the Applicant in the sum of NINE HUNDRED AND SIXTY POUNDS (£960.00) STERLING.

### **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**

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**Legal Member/Chair**

**21 January 2021**

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**Date**