

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 Regulation 9 of the Tenancy
Deposit Schemes (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/18/1268

Re: Property at 1C Sinclair Street, Halkirk, KW12 6XP ("the Property")

Parties:

Mr Martin Foy, 26 Bramble Close, Culduthel, Inverness, IV2 6BS ("the Applicant")

Mr Neil MacKay, 4A Sinclair Street, Halkirk, KW12 6XP ("the Respondent")

Tribunal Members:

Graham Harding (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Applicant)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Applicant had failed to prove that he had paid a deposit to the Respondent that the Respondent had failed to lodge in an approved Tenancy Deposit Scheme. Accordingly the Tribunal dismissed the application

Background

1. By application received by the Tribunal on 22 May 2018 the applicant applied to the Tribunal for an order under the Tenancy Deposit Schemes (Scotland) Regulations 2011.
2. The application was accepted by the Tribunal and both parties submitted written representations to the Tribunal in advance of a Case Management Discussion that was held on 15 August 2018.
3. It was determined at the Case Management Discussion that a hearing should take place to determine whether or not an agreement was reached between the Applicant and the Respondent that the Applicant's half share of the deposit he had paid to Paul Cruickshank was to constitute a new deposit payable on the property and repayable at the conclusion of the Tenancy Agreement between the parties.

4. A hearing was fixed to take place at the Station Hotel, Thurso on 22 February 2019. In advance of the hearing the Applicant advised the Tribunal that he was unable to attend but that he wished to rely on his previous written submissions.

The Hearing

5. The hearing was attended by the Respondent alone.
6. The Tribunal directed the Respondent to his letter to the Tribunal dated 31 July 2018 and queried whether the facts as stated therein remained the Respondent's position. The Respondent confirmed this was the case.
7. The Tribunal sought clarification from the Respondent if he was aware of the terms of Section 27 of the Housing (Scotland) Act 1988 as it appeared to the Tribunal that the Respondent may be admitting to committing a breach of that section by taking an additional premium from Mr Cruickshank following his decision not to take up the tenancy of the property. The Respondent was unaware of the terms of Section 27.
8. The Respondent went on to say that his agreement had been with Mr Cruickshank alone. When Mr Cruickshank told him he was not taking up the tenancy he reached an agreement with him that he would retain the payments made by Mr Cruickshank to cover the rent for August and for retaining the property in July.
9. The Respondent said he had not retained any of the paperwork and could not recall the exact terms of the conversation he had with Mr Cruickshank but it had been agreed that he would keep all the funds paid.
10. The Respondent said that he had agreed to the Applicant moving into the property. He could not recall exactly when the Applicant moved in but did not dispute the dates provided by the Applicant. He confirmed the Applicant started to pay rent for the property at the beginning of September 2016 and continued to do so throughout the period the Applicant occupied the property.
11. The Respondent confirmed that there had never been a written tenancy agreement between himself and the Applicant. He did not recall the Applicant asking for one. He said at the time his son had been ill with cancer and he had been more concerned about that. He had never got round to drawing up a new tenancy agreement with the Applicant.
12. In response to a question from the Tribunal the Respondent confirmed that he had not been a registered landlord at the time he had entered into the tenancy agreement with Paul Cruickshank nor when the Applicant had commenced the tenancy of the property. He said he had become a registered landlord about 18 months ago.

13. The respondent said that at the time the applicant became a tenant he was aware of the Tenancy Deposit scheme but had not lodged any deposit as the Applicant had not paid a deposit.
14. The respondent confirmed that the tenancy agreements that he used at that time made no mention of deposits being lodged in a scheme and that now he no longer took deposits. He said that as the Applicant had been working at Dounereay he had not been concerned about there not being a deposit paid as he would have been able to contact the Applicant's employers if there had been a problem.
15. The Respondent said that had there been a written agreement between the Applicant and himself then the Applicant would have had to have given two months notice to terminate the agreement. As it was the Applicant had given slightly less than one month but the Respondent had not taken issue with this.
16. The Respondent's position was that the original agreement had been between himself and Paul Cruickshank. The Applicant was not a party to that agreement. He then entered into a verbal agreement with the Applicant and accepted payment of rent from the Applicant commencing at the beginning of September 2016. The applicant had not paid a deposit to the Respondent and therefore there was no deposit to lodge in an approved scheme.

Findings in Fact

17. The Applicant paid Mr Paul Cruickshank £430.00 in July 2016 for what he believed was one half of the rent due on the property for August 2016 and one half of the deposit of £430.00 due to be paid by Mr Cruickshank to the Respondent.
18. Mr Cruickshank did not move into the property and his agreement with the Respondent was terminated.
19. The Applicant moved into the property in August 2016 and commenced paying rent to the Respondent in September 2016.
20. There was no written tenancy agreement in place between the Applicant and the Respondent.
21. The Respondent retained the funds paid to him by Mr Cruickshank for rent for August 2016 and for loss of rent in July 2016.
22. There was no deposit paid by the Applicant to the Respondent.

Reasons for Decision

23. It was unfortunate that the Applicant chose not to attend the hearing nor avail himself of the opportunity he was given to have Mr Paul Cruickshank give evidence as a witness. The Tribunal did not doubt that the Applicant believed

that he had provided Mr Cruickshank with his half share of the deposit but the problem for the Applicant was that he was unable to provide evidence to dispute what was said by the Respondent as to the agreement he had reached with Mr Cruickshank over the termination of his agreement to rent the property.

24. It was clear from the Applicant's own written representations that it was not intended that the original agreement was to be assigned to the Applicant but that he was expecting there to be a new agreement. That being the case it was apparent to the Tribunal that it could not be said that there was any agreement between the Applicant and the Respondent that the £215.00 he had paid to Mr Cruickshank should be used as a deposit and therefore lodged in an approved scheme.

25. Accordingly the Tribunal was satisfied that the application should be dismissed.

Decision

26. The Applicant having failed to prove that an agreement was reached between the Applicant and the Respondent that the Applicant's half share of the deposit he had paid to Paul Cruickshank was to constitute a new deposit payable on the property and repayable at the conclusion of the Tenancy Agreement between the parties dismissed the application.

27. The Tribunal's decision was unanimous.

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.

G Harding

Legal Member/Chair

Date

22 February 2019