



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 (1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/PR/19/3343

Re: Property at 1/2 82 Dumbarton Road, Glasgow, G11 6NX (“the Property”)

Parties:

Ms Laura Fryer, 240032 Wilcox Sideroad, Owen Sound, Ontario, Canada (“the Applicant”)

Ms Luise Harvey, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for a payment order for the sum of £200 should be granted.

Background:

This is an application for a payment order in terms of S 71 (1) of the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act).

The Applicant is seeking payment of the unreturned part of a deposit paid by the Applicant for the tenancy entered into by the parties for the property commencing on 15 December 2018. The application under rule 111 The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (the rules) seeks an order for payment of £200.

Initially the application was made against Central Letting Services (Ltd) Glasgow (CLS) as the letting agents dealing with the property. However they were not the landlord and they advised the Tribunal that they are also no longer acting for the landlord Ms Harvey.

A CMD had been arranged for 26 March 2020 but this was postponed on the request of the Applicant.

The notification for the CMD on 5 October 2020 to the Respondent was done in terms of Rule 6A of the rules by advertisement.

The following documents had been sent as evidence by the Applicant:

1. Tenancy Agreement commencing 15 December 2018
2. Email from CLS to Applicant headed "your next step now: to pay the deposit & rent advance
3. Email from CLS to Applicant of 10 December 2018
4. Email from Applicant to CLS 5 August 2019

The Case Management Discussion

Only the Applicant took part in the CMD held by telephone. There had been no representations made by the Respondent and the Respondent did not participate in the call. The application thus proceeded as undefended.

The Applicant advised that the Letting Agents had, as could be seen in the email of 10 December 2018 lodged with the case, acknowledged payment of the deposit for the amount of £715. The deposit had been stated as that amount in their correspondence to her. After the end of the tenancy she was contacted by MyDeposits Scotland and eventually the whole deposit sum lodged with them of £515 was returned to her. However, she had paid £715 and there continues to be a shortfall of £200. She wrote to CLS about this but received no reply. She had no contact with the landlord and all issues regarding the tenancy were dealt with by CLS on behalf of the landlord.

The Tribunal makes the decision on the basis of the written evidence lodged by the Applicant and the information given at the hearing by the Applicant.

Findings in Fact (Clauses referred to below relate to clauses of the tenancy agreement)

1. The Applicant and the Respondent entered into a tenancy agreement for the property commencing 15 December 2018 (Clause 6)
2. The Respondent was the landlord for the property (Clause 3)
3. Central Letting Services (Glasgow) Ltd (CLS) were acting as agents on the Respondent's behalf (Clause 2)
4. The agent was to be the first point of contact for rent, maintenance, deposit and admin relating to tenancy (Clause 2)
5. The tenancy terminated on 31 July 2019
6. The Applicant paid the sum of £715 as payment of a deposit on or before 10 December 2018
7. A receipt for the deposit sum (Clause 11) was issued by way of the email from CLS to the Applicant dated 10 December 2018.
8. The property advertisement included the statement that a deposit of £715 was payable.
9. The deposit sum stated in the tenancy agreement was £515.(Clause 11).
10. A deposit of £515 had been lodged for the tenancy with MyDeposits Scotland

11. This was returned in full to the Applicant after the end of the tenancy.

Reasons for Decision

In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,
a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

1. The Respondent did not make any written representations and did not attend the CMD. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case.
2. The application is not disputed. The Tribunal had not received any representations challenging the evidence of the Applicant. The Tribunal thus accepted said evidence as factually correct.
3. The Applicant paid the sum of £715 to CLS prior to the commencement of the tenancy. CLS had requested this payment as a deposit in the email setting out the next steps to be taken by the Applicant and confirmed that the payment had been received by 10 December 2018.

4. The Applicant paid all sums due for the property to CLS as authorised agent for the landlord and had no separate contact with the landlord. Payments made to CLS in connection with the property and tenancy agreement were thus to be held to have been received by CLS on behalf of the landlord.
5. The Applicant paid £715 deposit, having been asked to do so by CLS on behalf of the landlord prior to the commencement of the tenancy. She should have only been asked to pay £515 as this was the sum for the deposit stated in the tenancy agreement and the sum lodged as a deposit with MyDeposits Scotland. Only this sum was returned to the Applicant after the tenancy ended on 31 July 2019.
6. It is not clear from the correspondence if there was an error in the tenancy agreement, which refers to a sum of £515 deposit in Clause 11 or if there was an error in the advertisement and the emails from CLS to the Applicant requesting £715 as deposit with regard to the deposit amount.
7. In terms of Clause 11 of the tenancy agreement the landlord was not entitled to a deposit payment of £715 in terms of the tenancy agreement but only to a payment of a deposit of £515. A deposit amount of £715 was paid to the landlord by the Applicant and thus an overpayment of £200 occurred in December 2018. Only £515 deposit as stated in Clause 11 of the tenancy agreement were lodged with MyDeposits Scotland and returned to the Applicant. Neither the landlord nor CLS would be entitled to retain these funds of overpaid deposit after the end of the tenancy in terms of the tenancy agreement.
8. The amount of £200 overpaid deposit has not been returned and remains outstanding. The Applicant is entitled to repayment of said sum.

Decision

The Tribunal grants an order against the Respondent for payment of the sum of £200 to the Applicant.

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.

Petra Hennig-McFatrige

**Petra Hennig McFatrige
Legal Member**

**5 October 2020
Date**