



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

Chamber Ref: FTS/HPC/CV/22/3531

Re: Property at 2 Leyden Court Apt 1/2, Mary Hill, Glasgow, G20 9LY (“the Property”)

Parties:

Mr Chin Van, 145 Craighton Road, Govan, Glasgow, G51 3RJ (“the Applicant”)

Ms Yamei Zheng, 16c Braid Street, Glasgow, G4 9YA (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mr A Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted in favour of the Applicant in the sum of £50.

Background

1. This is a Rule 111 application dated 28th September 2022 whereby the Applicant was seeking an order for payment in the sum of £400 in respect of an unreturned tenancy deposit. The Applicant lodged a copy of a tenancy agreement entered into between himself and a third party on 1st September 2021. The tenancy agreement stated a different address to that of the Property. The property in the original tenancy agreement was owned by the third party. There was an explanation from the Applicant that he was to reside at the original named property, but there had been agreement between himself and the third party that he would rent the Property at 2 Leyden Court instead. The Property was owned by the Respondent. The application had been raised against the Respondent and the third party. The Applicant lodged confirmation of payment of the deposit.
2. The tenancy ended on 31st August 2022.
3. Both parties lodged written representations and productions. The third party lodged written representations stating that the application was nothing to do

with him as the Applicant did not stay at his property. The Respondent stated that she had repaid the sum of £350 to the Applicant, retaining the sum of £50.

4. A Case Management Discussion (“CMD”) took place by telephone conference on 20th January 2023. The Respondent and the third party were in attendance. Initially, the Applicant was not in attendance. The Tribunal Clerk made a call to the Applicant, who then joined the telephone conference. The Applicant confirmed he had received £350 from the Respondent after he had made the application. He said he wished to recover the remaining £50, as he did not believe the Respondent was justified in retaining the sum. The Applicant confirmed that he was satisfied the Respondent was the landlord. The Tribunal ordered that the third party be removed as a party.
5. The Respondent said she had been reasonable in only retaining £50. Although the electricity was a zero balance, the Applicant was due to pay another tenant for electricity, and she had paid £30 to the other tenant. The Respondent said there was a signed tenancy agreement in respect of the Property. The Respondent said she paid £10 to have keys cut. She did not charge for the cleaning. Curtains was purchased to replace the curtains removed by the Applicant. The third party was assisting her in arranging her landlord affairs as she did not reside in the country.
6. The CMD was continued to an evidential hearing.
7. The case called for a hearing by telephone conference on 24th April 2023. Both parties were in attendance. The Applicant had lodged late documents. The Respondent had failed to lodge a witness list timeously. During the preliminary discussion, a receipt for curtains claimed by the Respondent in the sum of £39.99 was emailed to the Tribunal. The hearing was adjourned to a further date to allow both parties time to consider the late documents lodged. There was some discussion about whether interpreter services were required for the Respondent’s witness. The Respondent said the witness did not require the services of an interpreter. Parties were informed that they could ask for any adjustments required in relation to accessing documents.
8. Parties were notified on 10th May 2023 of a hearing to take place by telephone conference on 7th June 2023.
9. A continued hearing took place by telephone conference on 7th June 2023. The Respondent was in attendance. Initially, the Applicant was not in attendance. The Tribunal Clerk made a call to the Applicant, who then joined the telephone conference. The Applicant said he was unaware of the hearing as he had been very busy and could not check his emails.
10. As a preliminary matter, there was some discussion regarding the tenancy agreement lodged by the Respondent. It was the Applicant’s position that the Respondent had forged the tenancy agreement as he had not signed a new tenancy agreement with the address of the Property, and he had never

received a copy of the amended agreement. The Respondent said the original tenancy agreement had been amended when the Applicant asked for a copy of the tenancy agreement. The new document showed the change in address to that of the Property, but no new tenancy agreement had been signed by the parties.

The Applicant's position

Return of the keys

11. The Applicant said he had asked to whom he should return the keys at the end of the tenancy on 31st August 2022. There was no one to accept the keys. He asked repeatedly, as he was not comfortable leaving them at the Property. Eventually, an arrangement was made whereby he returned the keys on 15th September 2022 by attending at the address of the Respondent's friend, where he met someone to hand over the keys. It was his position that it would not have been correct to have left the keys at the Property or put it through the letterbox. He had to return the keys to a person. He said he had lodged a photograph of him giving the keys to the person. The Tribunal said they had not received a copy of the photograph.

Curtains

12. The Applicant said there were sheer curtains in the room that he initially rented. He removed the curtains and placed them in a storage cupboard and bought other curtains. He later moved room and took the curtains he had bought with him. There was no discussion at the end of the tenancy about the curtains. There was no check out inspection. He offered to sell the curtains to the next tenant, but they did not want them, so he kept them.

Cleaning

13. The Applicant said he got a message from the Respondent on 5th September 2022 regarding the lack of cleanliness at the Property. He returned and met a new tenant. He cleaned the microwave and counters. That was all he was asked to clean.

Electricity

14. The Applicant denied he was due to pay any electricity at the end of the tenancy, referring to a picture lodged which showed a zero balance on the meter. He paid his share as he went along. The Property was also used for Airbnb, and that led to more electricity being used. It was his position that any extra electricity paid by the Respondent was as a result of the Airbnb arrangement.

The Respondent's position

Return of keys

15. The Respondent said the Applicant was the last tenant to move out of the Property. She had asked him by message to check if the other tenants had left their keys. The Applicant had asked if someone could meet him to hand over the keys, but she told him just to leave them. She lives abroad and does not normally arrange for someone to meet an outgoing tenant to take the keys. This is not usually an issue. When the Applicant asked again a few days later, the Respondent told him to leave the keys at the Property or post them. By the time the keys were returned she had already arranged new keys. This was done by one of the new tenants at a cost of £10. The new tenants moved in on 2nd or 3rd September 2022.

Curtains

16. The Respondent said she provided cream or white curtains. They were not sheer. She told the Applicant if he required blackout curtains, he should get his own. After the tenancy ended, she asked the Applicant about the curtains. The new tenants said there were no curtains in the storage room.

Cleaning

17. The Respondent said the new tenants send her photographs of the Property, showing that it was not left in a clean state. She sent the photographs to the Respondent on 6th September, and he said he would go back to the Property and clean it. He only cleaned the microwave. The new tenants told the Respondent they paid £100 to have the Property cleaned. No receipts were available. The Respondent said she had lodged the photographs with the Tribunal. The Tribunal said it had not received copies of the photographs.

Electricity

18. The Respondent said she had paid £40 in 4 instalments of £10 on occasions when the Applicant's flatmate said the Applicant was refusing to pay his share of electricity. The Respondent said the Airbnb arrangement was only for one week and was not the cause of the electricity payments.

19. Responding to questions from the Tribunal, the Respondent said no written advice was given to tenants at the end of the tenancy to show what was expected of them. She considered it was common sense to clean the property and return the keys.

Evidence of Mr Qichuang Weng

20. Mr Weng is 33 years old and works in a Chinese takeaway in Glasgow. He moved into the Property and there was only one set of keys available. He went to a local shop to have more keys cut. It cost about £10 for the keys. He does not have a receipt as it happened too long ago.

21. The witness said the Property was very dirty when he moved in. The whole place was unclean. Asked how much it cost to have the Property cleaned, the witness said it was £60 for one cleaner and £100 for two cleaners. He did not keep the receipt for the cleaning. Asked whether the Applicant attended at the Property to clean, the witness said yes. The witness said the Applicant cleaned a little in the kitchen, but not the bedroom.
22. The witness said there were no curtains in his room. He bought curtains for £40.
23. Under cross examination, the witness said he moved in on 3rd September 2022 and he had the room near the kitchen. It was put to the witness that the man the Applicant had met when he returned to the Property to clean was a student. The witness said he had not been a student, but his flatmate had. Asked if it could have been his flatmate that met the Applicant rather than the witness, the witness said yes. The witness was unable to say whether the Applicant brought cleaning materials to the Property. Asked again whether the witness had met the Applicant, the witness said no.
24. The witness said there were no curtains in the storage room in the flat. He had looked, but did not find any curtains.

Summing up by Applicant

25. The Applicant submitted that the allegations were not supported by fact. He would question whether the witness actually lived in the Property or was really a tenant. There were no receipts available for cleaning and keys. The curtains had not been mentioned at the end of the tenancy. The tenant he met at the Property did not object to the cleanliness. He asked the tenant if he needed to clean the room, and the tenant said no. They parted on a friendly basis.
26. Asked by the Tribunal why he had not put the curtains back up at the end of the tenancy, the Applicant said he was in a hurry with lots of things to do.
27. Responding to questions from the Tribunal as to the state of cleanliness of the Property when he moved in, the Applicant said it was in a terrible condition but he did not complain.
28. The Applicant said the Airbnb arrangement was for at least a month, and the occupant was using a lot of electricity.

Summing up by Respondent

29. The Respondent said the Applicant could have posted the keys to her by Recorded Delivery. He should have put up the curtains. He should have complained if the Property was unclean.
30. Responding to questions from the Tribunal, the Respondent said the witness may not have been the man that the Applicant met when he returned to clean

the Property. There was another tenant who was a student, who the Applicant may have met.

31. It was the Respondent's position that the Applicant is keen on alleging fraudulent behaviour by others, referring to the tenancy agreement and the accusation that the witness may not have lived there.

Findings in Fact and Law

32.

- (i) The Applicant and a third party entered into a tenancy agreement in respect of another property owned by the third party to commence on 1st September 2021.
- (ii) Before the tenancy commenced, the Applicant agreed to change the subjects of the tenancy to the Property.
- (iii) The Respondent is the heritable proprietor of the Property.
- (iv) The Applicant paid a tenancy deposit of £400 to the Respondent at the start of the tenancy.
- (v) No new tenancy agreement was signed between the parties in respect of the Property.
- (vi) There was no formal check in procedure at the start of the tenancy.
- (vii) During the tenancy, the Applicant replaced curtains belonging to the Respondent with curtains that he purchased himself.
- (viii) The tenancy ended on 31st August 2022.
- (ix) There was no formal check out procedure at the end of the tenancy.
- (x) The Applicant repeatedly requested to meet with someone to hand over the keys to the Property.
- (xi) The incoming tenants of the Property paid to have a further set of keys cut.
- (xii) An arrangement was made for the Applicant to hand over the Property keys on 15th September 2022.
- (xiii) The incoming tenants claimed that the Property was not left in a clean state.
- (xiv) The Respondent initially withheld the tenancy deposit.

- (xv) The Respondent repaid £350 of the deposit to the Applicant, retaining £50 to cover the cost of keys, curtains, cleaning and electricity.
- (xvi) The Respondent was not entitled to retain any of the deposit.

Reasons for Decision

33. The Tribunal considered that the Respondent ought to have agreed to the Applicant's request for a proper handover of the keys at the end of the tenancy. It was not the Applicant's responsibility to post the keys to the Respondent. He was entitled to request a proper handover, and it was not clear why it took until 15th September 2022 before such an arrangement was made, when the Applicant had repeatedly asked for this. If the Respondent had made an earlier arrangement, no costs would have been incurred. She is not, therefore, entitled to recover the costs.
34. While the Tribunal considered that the Applicant ought to have reinstated the original curtains at the end of the tenancy without having to be told to do this, there was insufficient evidence to prove that he discarded the curtains and did not leave them in the Property. The Respondent did not arrange a proper check out procedure at the end of the tenancy. By the time she became aware that the curtains were missing, other tenants had moved into the Property. The witness evidence was contradictory at times, and the Tribunal was not persuaded that the witness understood English sufficiently to answer the questions properly. This was unfortunate, as an opportunity had been provided for interpretation services. Given that the witness stated that he had met the Applicant, and then that he had not met him, the Tribunal was unable to give much weight to the witness's evidence in respect of the curtains and other matters.
35. There was no check in or check out procedure carried out, and the Tribunal was not persuaded that the Applicant should be responsible for the cost of cleaning, if such costs were, indeed, incurred. No vouching was provided. The witness evidence was unclear as to whether £100 was paid out to cleaners. He gave the cost for one cleaner and two cleaners, but gave no detail about who carried out the work or how long it took. The Applicant was not the only occupant of the Property, yet no mention was made of whether the other outgoing occupants were responsible for the state of the common areas.
36. The evidence in respect of the electrical usage and bill paying was insufficient to prove that the Applicant did not pay his share of the electricity. No witness evidence was led in this regard.
37. The Tribunal considered that the Respondent's practices as a landlord fell far short of what would be expected. This may be due to the fact that she lives in China, and appears to rely on others to help out with tenancy matters. A new tenancy agreement was not prepared and provided to the Applicant when the subjects of the agreement and the landlord changed. Although the Tribunal did not consider the actions of the Respondent to be fraudulent in changing

the address on the original tenancy agreement, it was not signed by parties, the landlord was not correctly identified, and there was, therefore, no written contract between the parties, albeit a private residential tenancy was created. The Respondent did not have proper check-in and check-out procedures, therefore, it was impossible to evidence the state of the Property at the start and end of the tenancy.

38. In all the circumstances, the Tribunal was not persuaded that the Respondent was entitled to retain any of the tenancy deposit.

Decision

39. An order for payment is granted in favour of the Applicant in the sum of £50.

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.

H Forbes

Legal Member/Chair

7th June 2023
Date