



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/22/3734

Re: Property at 61H New City Road, Glasgow, G4 9DF (“the Property”)

Parties:

Miss Arouna, Room 5/11, 6 Havannah Street, Glasgow, G4 0AP (“the Applicant”)

Mr Shahzad Ahmed, 16C Braid Street, Glasgow, G4 9YA (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Applicant)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the action should be dismissed.

Background

The Applicant lodged an application on 10th October 2022 under Rule 111 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) seeking payment.

Lodged with the Application were:

1. Copy Tenancy Agreement showing:
 - (a) A start date of 1st December 2021
 - (b) A finish date of 31st August 2022
 - (c) Rent of £4155 to cover the 9 month period
 - (d) A signing date of 3rd December 2021
2. Screenshot showing a bank transfer by the Applicant to the Respondent of the sum of £4629, which includes £12 for the bank transfer
3. Screenshot of a text conversation between the Applicant and the Respondent’s partner
4. Screenshot of texts between the parties regarding the deposit

The Tribunal asked the Applicant to produce a calculation of the sum she was seeking. She lodged this with the Tribunal on 15th November 2022. She said that she had stayed in the property two months, for which the rent was £900, and the Respondent had returned £2700 to her. She calculated that she was due £4617-£2700-£900 = £1017 (including the deposit of £450). She was also seeking 3 times the deposit= £1350. She was also seeking a payment for mental loss due to the condition of the property.

The Application was served on the Respondent by Sheriff Officer on 23rd January 2023.

The Respondent lodged a written submission with the Tribunal on 3rd April 2023. He provided details of the tenancy deposit scheme and explained that the Applicant needed to apply direct herself to have it returned.

On the day before the Case Management Discussion was due to take place the Applicant requested a Mandarin interpreter. The Tribunal's administration were able to arrange this at very short notice.

Case Management Discussion

The Case Management Discussion ("CMD") took place by teleconference on 4th May 2023. The Applicant represented herself, with the assistance of an interpreter, Ms Picken, using the language of Mandarin. The Respondent represented himself.

The Chairperson made introductions and confirmed the purposes of a CMD in terms of Rule 17 of the Rules.

At the outset the Chairperson attempted to clarify the start and end dates, and the monthly rental of the tenancy with the parties. The Applicant said that the contract was signed on 18th December 2021, but she did not move in until 18th December 2021. The Respondent said that the contract commenced on 1st December 2021.

The parties agreed that the end date was 28th February 2022.

The Applicant said that the monthly rent was £450. The Respondent said that it was £555 for the first month and £450 per month thereafter. The Chairperson pointed out that there was no monthly figure in the contract, merely a sum to cover nine months.

The Chairperson asked the Applicant to confirm what she was seeking by way of an order. She said that she wanted the deposit and also what was due to her. The Chairperson noted that the Applicant had said in an email that she had received return of the deposit. She thereafter confirmed that that was true. The Respondent agreed that the deposit had been returned by the tenancy deposit scheme.

The Chairperson asked the Applicant to clarify the sum she was seeking. She said that it was £2357. The Chairperson asked her to break that sum down. After much discussion with the translator, she said that she had paid £4617, the respondent had

returned £2700, and she was due to pay two months rent at £900, leaving a balance of £1017.

The Applicant said that she was also seeking an amount of three times the amount of the deposit. The Chairperson pointed out that this would only be a remedy if the deposit had not been placed in a scheme, and also that such a claim was time barred in any event as it would have to have been lodged with the Tribunal within three months of the end of the tenancy.

The Chairperson pointed out that if the deposit had now been returned £450 should also be deducted from the sum sought. After some discussion with the translator about whether the sum included the deposit or not the Applicant confirmed that it should be deducted, leaving a sum sought of £567.

The Chairperson asked if the Applicant wished to claim anything else given that she had mentioned in her application and submission that she had suffered damage to her health. The Chairperson pointed out that medical evidence would need to be provided. The Applicant said that she had not attended the doctor.

The Chairperson confirmed with the Applicant that the sum sought was therefore £567.

The Respondent said that the Applicant had stayed in the property for three months rather than two and was therefore not due any refund. She had stayed for the whole of December, January and February.

He confirmed when asked by the Chairperson that he had three rental properties, did not use a letting agent, and had been letting for around four years. The Chairperson mentioned that the tenancy agreement was not in the form of a Private Residential Tenancy, as required by the Private Housing (Tenancies) (Scotland) Act 2016. She also mentioned that the Respondent had taken nine months rent up front when the law only allowed him to take a maximum of six months.

The Applicant said that she had not left on 28th February, but had left at the beginning of February, with the full knowledge and consent of the Respondent. She said that she had not agreed at the commencement of the Tribunal that she had left on 28th February.

The Respondent said that the Applicant had given a written notice saying she would leave on 28th February. This notice was not before the Tribunal.

On the basis that there was a dispute regarding when the tenancy came to an end, which was material as to whether or not any sum was due to be paid to the Applicant by the Respondent, the matter would need to proceed to a hearing.

The Chairperson said that she would issue a Direction that the Notice mentioned was to be lodged.

Neither party thought they would call any witnesses in addition to themselves.

The Direction mentioned was issued, and on 5th May 2023 the Respondent lodged a copy of the notice he had received from the Applicant, dated 17th January 2022, indicating that she was giving one month's notice "as required by law" and would leave the tenancy on 28th February 2022.

On 3rd July 2023 the Tribunal's administration team sent notice of the Hearing, with login details to the parties, using the address given by them.

The Hearing

The Hearing took place by teleconference on 7th August 2023. The Applicant did not dial in. The interpreter, Miss Xia, was present on the call. The Respondent represented himself.

The Chairperson asked the Clerk to telephone the Applicant. She did so, however, the number was no longer available.

The Tribunal adjourned for a short period to consider matters. By the time they reconvened at 10.30 the Applicant had still not joined the call. The Tribunal dismissed the application.

Reasons for Decision

Rule 29 of the Tribunal's Rules states:

29. If a party or party's representative does not appear at a hearing, the First-tier Tribunal, on being satisfied that the requirements of rule 24(1) regarding the giving of notice of a hearing have been duly complied with, may proceed with the application upon the representations of any party present and all the material before it.

Rule 24(1) states:

24.—(1) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a hearing (including any adjourned or postponed hearing) and any changes to the date, time and place of a hearing.

The Tribunal were satisfied that, in terms of the correspondence of 3rd July 2023, that the Applicant had been given reasonable notice of the date, time and place of the Hearing. The Tribunal decided to proceed with the Hearing on the basis of the material before it.

Rule 27 states:

27.—(1) The First-tier Tribunal must dismiss the whole or a part of the proceedings if the First-tier Tribunal does not have jurisdiction in relation to the proceedings or that part of them.

(2) The First-tier Tribunal may dismiss the whole or part of the proceedings if the applicant has failed to—

(a) comply with an order which stated that failure by the applicant to comply with the order could lead to the dismissal of the proceedings or part of them; or

(b) co-operate with the First-tier Tribunal to such an extent that the First-tier Tribunal cannot deal with the proceedings justly and fairly.

Rule 2 states;

2.—(1) The overriding objective of the First-tier Tribunal is to deal with the proceedings justly.

(2) Dealing with the proceedings justly includes—

(a) dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties;

(b) seeking informality and flexibility in proceedings;

(c) ensuring, so far as practicable, that the parties are on equal footing procedurally and are able to participate fully in the proceedings, including assisting any party in the presentation of the party's case without advocating the course they should take;

(d) using the special expertise of the First-tier Tribunal effectively; and

(e) avoiding delay, so far as compatible with the proper consideration of the issues.

The matter in dispute was the date on which the tenancy had come to an end. The Notice lodged by the Respondent showed that it came to an end on 28th February 2023. At best, depending on the amount of the monthly rent, the Respondent would have been due to pay the applicant £6.66.

The Tribunal decided to dismiss the application on the basis that the Applicant had failed to co-operate with the Tribunal to such an extent that the First-tier Tribunal could not deal with the proceedings justly and fairly. The overriding objective to act justly includes dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties and avoiding delay, so far as compatible with the proper consideration of the issues. Taking those principles in to account it would not have been fair to the respondent to continue to a further Hearing.

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.

7th August 2023

Legal Member/Chair

Date