



Decision to Review in terms of Rule 39 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) a Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) made under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”) and Rule 103 of the Rules.

Chamber Ref: FTS/HPC/PR/20/0638

Re: Property at 11 Baird Gait, Cambuslang, Glasgow, G72 8SS (“the Property”)

Parties:

Mr Paul Walker, 22 Coulters Crescent, Carmunnock, Glasgow, G76 9AY (“the Applicant”)

Mr Philip Rough, Flat 4/1, 10 Haughview Terrace, Glasgow, G5 0HB (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member)

Decision to Review

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) at its own instance in terms of Rule 39 of the Rules determines to review its Decision of 6 August 2020 and gives Notice to the Parties in terms of Rule 39(4)(a) of the Rules that the Tribunal sets Monday 5 October 2020 as the date by which the Parties are to respond and seeks the views of the Parties on whether the Review can be determined without a hearing.

in terms of Rule 39(7) of the Rules, the Tribunal sets out the reasons why the Decision is being reviewed.

Background

1. By application received between 24 February 2020 and 26 March 2020 (“the Application”), the Applicant made an application to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Chamber”) for a determination and an order in terms of Rule 103 of the Rules and Regulation 9 of the Regulations. On 1 April 2020, the Chamber President accepted the Application and a Case Management Discussion (“CMD”) was fixed for 6 August 2020 at 14.00 by telephone conference call. The Application was intimated to the Respondent. The CMD was intimated to both Parties.
2. The CMD took place on 6 August 2020 at 14.00. The Applicant took part. The Respondent did not take part. The outcome of the CMD was that the Tribunal determined that the Respondent had been in breach of the Regulation 9 of the Regulations as he had not lodged the tenancy deposit within the timeframe set out in Regulation 3 nor had he provided the Applicant with the information required by Regulation 42. The Tribunal proceeded to make an Order for Payment in the sum of £2,600.00, being twice the amount of the tenancy deposit.
3. The Tribunal’s Decision dated 6 August 2020 was intimated to the Parties.

Correspondence from Respondent subsequent to issue of Decision

4. Subsequent to the issue of the Decision to the Parties, the Respondent wrote to the Chamber administration by email on 13 August 2020 as follows:-
“Margo, I noticed in the written decision the following statement: Iv, No information in respect of the lodging of the tenancy deposit was provided by the Respondent to the Applicant. Please see the attachment which was sent 21.07.20, no reference to my dispute information being refereed to. Regards Philip”

5. The Chamber administration on the instructions of the Tribunal responded on 14 August 2020 as follows and copied same to the Applicant:-

“Dear Mr Rough, The tribunal advises that it has made its decision based on the information before it. If the point you are making is that the tribunal failed to take account of any significant facts, in terms of the tribunal rules, you can ask the tribunal to review its decision. You are also entitled to request that the decision is recalled and you can appeal the decision on a point of law. The tribunal rules are the "First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017" and the relevant parts are Rule 39 (review), Rule 30(recall) and rules 37 and 38 (appeal).”

6. The Respondent replied by email on 17 August as follows:

“ Margo, Called but you were unavailable spoke to your colleague and informed him of the date that i sent on the 21.07.20 was informed a receipt was sent but not received, we though the email attachments what was sent and highlight that the information provided to yourself. Also stated to your colleague there was no reference to any information that was provided or any acknowledge within the written decision, in contrary to the statement iv as shown below when in fact there was information had been provided. Iv, No information in respect of the lodging of the tenancy deposit was provided by the Respondent to the Applicant. that it seems nothing as been provide to the legal department and and made myself available for the for the 06.08.20 but no contact was for the phone meeting, your colleague informed me to detail the above and email you, not hearing from you with the above emails that have been sent hence why I called today for confirmation, can you please review the above. philrough@hotmail.com 07988043831 Regards Philip.”

7. As an attachment to that email, the Respondent sent the following email dated 21 July 2020:

“Hi, Reference - FTS/HPC/PR/20/0638 As requested, please find my reply to the dispute that Mr Paul Walker has raised, the tenancy agreement was already in occupation of the property and was under the impression that the previous tenancy agreement continued (tacit relocation) and the registering of the deposit within 30

working days. Please see attachments for the following: 27.04.18: Tenancy agreement sent to Mr Walker. 26.06.18: Received tenancy agreement signed from Mr Walker. 06.07.18: On a personal note, if there was a delay in registering with safety deposit Scotland this may have slipped my mind due to dealing with my mother's admittance to a care home due to dementia. 28.08.18: Registered with Safe Deposit Scotland. Would like to highlight that it appears odd that this is being raised several years after the fact. Kind regards Philip"

8. It appears that following this email response of 22 August 2020, the Chamber administration re-issued its response of 14 August 2020. The Respondent then replied on 22 August 2020:

"Mr Morton, Thank you for your email and attached letter, I would like to ask the tribunal to review its decision, also requesting that the decision is recalled to appeal the decision. Regards Philip"

9. As the Respondent's request for a review of Tribunal's Decision did not comply with the Rules, the Chamber administration on the instructions of the Tribunal responded on 24 August 2020 with the following and copied same to the Applicant :-

"The tribunal's reply to you of 14 August 2020 sets out the options open to you. If you are lodging a review, recall or appeal you must follow the Rules and set out your case. Other than to refer you to the correct Rules, the tribunal cannot assist you with this and you might wish to take your own advice. As previously advised the Rules are "First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017" and the relevant parts are Rule 39 (review), Rule 30(recall) and rules 37 and 38 (appeal). You must follow these precisely in respect of the information you need to include and in respect of intimating to the Applicant."

10. In response to the last mentioned chamber response on 24 August 2020, the Respondent replied further by email on 12 September 2020:-

"Good Morning,

27.09.20: Your email (Please see attachment) does not state that you were looking for a response it details options only, this email which was sent to yourself on the 17.08.20 was asking the following question:

No reference to any information that was provided or any acknowledge within the written decision, in contrary to the statement iv as shown below when in fact there was information had been provided.

Iv, No information in respect of the lodging of the tenancy deposit was provided by the Respondent to the Applicant.

that it seems nothing as been provide to the legal department and and made myself available for the for the 06.08.20 but no contact was for the phone meeting, your colleague informed me to detail the above and email you, not hearing from you with the above emails that have been sent hence why I called today for confirmation, can you please review the above.

No answer was ever provided until the 27.09.20 stating it was sent.

22.08.20: Please see attachment email sent to Mr David Morton providing my response to tribunal to review its decision. Is there anything else that I need to provide ?

Regards

Philip”

Decision of the Tribunal under Rule 39 of the Rules to Review its Decision of 6 August 2020.

11. Following the Respondent's last mentioned response of 12 September 2020, it appears to the Tribunal that, despite the Tribunal setting out how the Respondent can and should challenge the Decision of the Tribunal, the Respondent fails or refuses to challenge the Decision in terms of the Rules.

12. It also appears to the Tribunal that, nonetheless, the Respondent continues to have a grievance in respect of a particular aspect of the Decision namely Finding in Fact “(iv) *No information in respect of the lodging of the tenancy deposit was provided by the Respondent to the Applicant.*”
13. Therefore, in the interests of justice and in terms of the First-tier Tribunal’s overriding objective as set out in Rule 2 of the Rules, the Tribunal will of its own accord and at its own instance review its Decision of 6 August 2020 and that in terms of Rule 39 of the Rules.
14. Accordingly, Tribunal gives notice to the Parties in terms of Rule 39(4)(a) of the Rules that the Tribunal sets Monday 5 October 2020 as the date by which the Parties are to respond to the review and seeks the views of the Parties on whether the Review can be determined without a hearing.
15. For the sake of completeness, the Tribunal notes that in his email of 22 August 2020, the Respondent requests that the “*decision is recalled to appeal the decision*”. The Tribunal has no discretion or locus to assist the Respondent in these respects.

Karen Moore

Legal Member/Chair

18 September 2020

Date