



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/PR/20/1067

Re: Property at 150 Renfrew Street, Glasgow, G3 6RF (“the Property”)

Parties:

Mr Marcus Austin- Baird, Silverton, Borgue, DG6 4TP (“the Applicant”)

Dr Sakineh Mostowfi Samiei, 150 Renfrew Street, Glasgow, G3 6RF (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent is liable for the return to the Applicant of his deposit. The Tribunal accordingly has decided to make an order for payment in the sum of FIVE HUNDRED POUNDS (£500) STERLING. The order for payment will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.

Background

1. This is an application for an order for payment. It had been processed by the Tribunal as an application under Regulation 103 the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”) where a Landlord has failed to place a tenancy deposit with an approved tenancy deposit scheme in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“2011 Regulations”).

2. The Case Management Discussion (“CMD”) proceeded on 19 August 2020 by way of a teleconference call. Both the Applicant and the Respondent joined the call.
3. The Applicant had lodged various emails between himself and the Respondent dated 4 February 2020 and a copy of the tenancy agreement. These emails show that the Applicant gave 28 days’ notice to the Respondent that he wished to remove from the Property and enquired what tenancy deposit scheme his deposit had been placed with. The emails also show that the Respondent stated the return of the deposit was dealt with in the tenancy agreement. Thereafter the emails show the Applicant was seeking the return of the deposit and that the Respondent also gave notice for the Applicant to leave the Property on 3 March 2020 and stated she would return the deposit 15 days after termination if the rent was paid the following day and the energy bills up to the end of his stay in the flat were paid.
4. The Respondent had lodged a written response to the application. She stated she was not required to be a registered landlord (under the Antisocial Behaviour etc. (Scotland) Act 2004) nor lodge the deposit under the 2011 Regulations as she is a “resident landlord”. With regard to the return of the deposit the Respondent referred to Clause 3 of the tenancy agreement which stated the deposit was for the *“payment of unpaid heating and lighting, any telephone charges and damages to the premises and their contents.”* She also referred to Clause 6 which stated *“Refusing to check out the inventory by the tenants will result in the loss of the deposit”* and Clause 9 which prohibited tenants from assigning or subletting the premises or any part of them without her prior written consent. The Respondent also lodged emails with the Applicant with regard to the gas and electricity accounts and which showed the Applicant moved out on 16 February 2020.
5. During the Case Management Discussion the Applicant clarified that he was not seeking an Order under the 2011 Regulations. He simply wanted the Respondent to repay his deposit of £500. He claimed that the Respondent was not a “live in” landlord. The Applicant denied he had sublet any rooms, had caused damage or had taken any items and that the Respondent was accordingly obliged to pay his deposit back to him.
6. The Respondent disputed she was liable to repay the deposit to the Applicant as she claimed he had sublet rooms in the Property without her permission and thereby making £1000s which was her money, had damaged a sink and doors and had taken a tile cutter, electric saw and an electric drill. She explained that

between October 2019 – February 2020 she was living in France where she had a property. She maintained however she was a “resident” landlord.

7. The Tribunal continued the case to a Hearing to consider whether as a preliminary matter, the Respondent was a “resident” landlord or not (this would determine whether the Tribunal had jurisdiction to consider the application for the return of the deposit in terms of Section 16 of the Housing (Scotland) Act 2014. If the Tribunal had jurisdiction the Hearing would then consider whether the deposit should be repaid to the Applicant or not. Reference is made to the Note on the Case Management Discussion. The question as to whether the Tribunal actually had jurisdiction in this matter was accordingly a matter for the Tribunal at the Hearing to determine.

Hearing

8. The Hearing proceeded on 26 October 2020 by way of teleconference. Both the Applicant and the Respondent were in attendance and represented themselves.
9. The Applicant had lodged various emails between himself and the Respondent dated 4 February 2020 and a copy of the tenancy agreement between the parties. The Respondent had lodged a written response to the application by way of two emails dated 17 August 2020 one timed at 5.49am and the other at 8.21am, various photographs, an email to the Applicant dated 2 May 2020, emails with the Applicant dated 10 and 16 February 2020 with an email dated 7 February 2020 from British Gas to the Applicant. Neither party had lodged any further documents ahead of the Hearing. The Tribunal considered all these documents some of which were referred to in evidence.
10. The Applicant advised he would give evidence on his own behalf. He had one witness, Ciaran Black. The Respondent had no witnesses but would give evidence on her own behalf
11. Before evidence started, the Respondent advised the Tribunal that after the CMD she had contacted Glasgow City Council’s landlord registration team and had discussed her position with them. They had recommended that she register with them and she confirmed she was a registered landlord as from 7 September 2020. She was good enough to provide the Tribunal with her landlord registration number.

The Applicant’s Evidence

12. The Applicant gave evidence that when he first moved into the Property in October 2019 there were two other people living there. The Respondent had been there for a few days, but had then left. For all the time he lived there, the Respondent was never there. He lived in the Property with two other people. He had paid £500 deposit to the Respondent. There had been some issues with the electricity and gas accounts to begin with and which he put into his name. He claimed the Respondent never returned deposits. He took exception to the content of the Respondent's email of 17 August 2020, timed at 5.49am and denied that his mother had pushed the Respondent when he went to get the remainder of his possessions on 16 February 2020. His 17 year old brother and mother had simply come along to help him move out, but he did not agree with the picture painted by Dr Samiei's email. He denied that when the Respondent returned on 3 February 2020 there were people moving out with suitcases during the night as she claimed.
13. The Applicant felt the Respondent was holding him responsible for all the damage and was placing blame on him for things he did not do. She wanted him out the Property when she came back at the beginning of February 2020 because of this. He denied subletting or causing damage which the Respondent claimed to have been caused by subletting. He did not steal items from the flat or damage door locks. He felt he was in an impossible position by trying to prove he did not do these things. He had one guest in his room when the Respondent returned. He was very responsible and took care of the flat. He had not done anything which would entitle the Respondent to keep his £500 deposit.
14. Dr Samiei was given an opportunity to cross examine the Applicant. Rather than asking specific questions she took the opportunity to explain to the Tribunal about the electricity account. She eventually asked the Applicant whether he had received her emails asking him not to bring his mother and brother on 16 February 2020. The Applicant stated that he had but had not responded to the emails. His position was he needed help to move out the Property and anytime he was in the flat she called him a thief and used derogatory language towards him. He did not feel the need to respond. He just wanted to leave quietly.
15. The Respondent then referred to "house rules" which prohibited visitors. The Tribunal noted that these had not been lodged. The Respondent claimed that these "house rules" were part of the tenancy agreement which would not allow the Applicant to have any visitors. Despite the Tribunal going through the tenancy agreement between the parties on a clause by clause basis, the Respondent could not identify any clause that referred to any "house rules" or which prohibited visitors. She had no other questions for the Applicant.

16. In response to questions from the Tribunal, the Applicant advised the Respondent was probably in the Property no more than 7 days during his whole time there. He shared the Property with Jia and Ciaran Black. Jia had left in December. Mr Black had left in January. He explained that when he moved in Mr Black was in a smaller downstairs' bedroom, but had then moved upstairs to the larger bedroom. That larger bedroom had been locked. After Mr Black had moved bedrooms, all the bedrooms were unlocked. He had access to his own room, Mr Black's and Jia's rooms and Mr Black's second room. They all had access to the kitchen and bathroom. They did not have access to the lounge which was locked and was Dr Samiei's. However she did not live there when he was there.
17. The Applicant was also questioned by the Tribunal with regard to the inventory. He explained he did not recall doing an inventory at the beginning of the tenancy. He did not recall being given a written list of items. The Respondent had asked him to send photos of his bedroom to her, which he did. He did not recall signing any inventory. The Tribunal asked whether he had refused to go through any inventory. He explained that he could not be in the Property without being shouted at by the Respondent when she returned, but had not been asked. He was questioned as to whether the Respondent had carried out an inventory check when either Jia or Mr Black had vacated. He explained that she was not there when either of them had left.
18. After questioning by the Tribunal, the Respondent was given another opportunity to ask the Applicant any questions arising from the Tribunal's questions. She did not ask questions but made statements to the effect that the inventory was not signed but she had photographs of the room. That was enough. She explained that Mr Black had stayed in the downstairs' room. He had contacted her and asked for permission to move into the locked bedroom. She told him he could use her bedroom and unscrew the lock on the door. She explained that every room had a lock and that her bedroom and lounge were always locked. She also claimed she had been in the Property longer than the Applicant claimed. It was her flat and she would move people in.
19. On that point, the Tribunal asked the Applicant what the position was after Jia moved out. The Applicant explained Jia had left his room unlocked. He assumed the Respondent had advertised Jia's room as despite the Respondent claiming she moved people in, she had contacted him to ask him to show people around. He had shown a girl around the flat, talked to her a bit and later she had contacted him to say she was not interested in taking the room. She didn't move in and had never lived there.

Mr Black's Evidence

20. Ciaran Black then joined the conference call to give evidence. He explained the Respondent had not been in the Property except when he had first moved in. He had seen no evidence that the Applicant had sublet any other rooms in the Property or that there was any damage caused by the Applicant.
21. The Respondent then questioned Mr Black. She asked him why he did not lock the downstairs' room when he moved rooms. He explained that he and the others did not see any reason to lock their doors. There were no padlocks as there was no reason for them. The Respondent asked why he did not lock her bedroom after he left. He explained that he had been under the impression she was due to return to the Property and did not think about re-securing the lock.
22. Mr Black was asked further questions from the Tribunal. He confirmed he had lived in the Property between 7 October 2019 – 18 January 2020 although under his tenancy agreement he could have stayed there until April 2020. He gave evidence that there had been no inventory taken, but that he had taken photos of his first bedroom and sent them to the Respondent, but that they had not been thorough. There were lots of bits and pieces in the kitchen and bathroom where he had had some basic queries. There had been no condition assessment after he left. He explained that when Jia had left the Respondent had not done a condition assessment as she was not there. She had accordingly not carried out a condition assessment of Jia's room or either of his bedrooms. Jia had left in about November/December 2019. He explained that Jia had left very quickly, that he had left the key to his room in an envelope on top of the post which had accumulated on a table. Jia had left bedding and bits and pieces in his room. Some of the bedding may have been the Respondent's. He explained that no-one touched Jia's room after he left, although they had turned the heater off. The room had not been sub-let. Mr Black then left the teleconference.

The Respondent's Evidence

23. Dr Samiei gave evidence on her own behalf. She explained to the Tribunal that she would ask tenants to show other potential tenants around. They were all young people and it was important that they get on well together. She explained that she was not living there when the Applicant lived there. She was resident in the UK, but her work as an archaeological conservationist often took her away. In questioning from the Tribunal, she explained she would live in the Property when she was back in the UK. She would on occasions let out one of the other three bedrooms if she was living in the Property as she wanted to keep the other two bedrooms free for family. She would only let out three rooms if she was not going to be in the Property.

24. When she returned to the Property at the beginning of February 2020 she found the lock in the lounge was broken, that there were various items of hers in Jia's room including clothes that were not Jia's and bank statements etc. written in Chinese. She was not sure if someone else had been living in Jia's room. She did not know who was responsible for the state of Jia's room. He had left his keys and padlock on the table. Other bedrooms which had not been let out to the Applicant also had her personal bedding which had been used and other personal items. She carried out an investigation by emailing Jia, Mr Black and the Applicant. She stated it was unfortunate Jia did not reply to her as she felt she knew him. Mr Black had replied but had denied he had left anything.
25. The Respondent explained that she had allowed Mr Black to move upstairs to the big bedroom which was her bedroom. Mr Black had looked after her clothes. There was an airing cupboard in her bedroom, the contents of which, including bed linen and towels, had been taken out and used. She asked Mr Black if he had used the contents from the cupboard. She explained she trusted him when he advised he had not used the contents of the cupboard. She explained that her bedroom was always locked. She had no evidence who had used the items from the airing cupboard, but she did not believe that Mr Black would do so and Jia had always looked after the flat. He had lived with her in the Property in summer 2019 and she knew him.
26. With regard to the missing items, the Respondent gave evidence that it was not until after the Applicant had left that she discovered the tile cutter, which was under the Applicant's bed, had gone missing. She had seen the Applicant enter the flat one time with a large coat on. A few months later when she needed to use the electric saw and drill which had been kept in a drawer in the living room she realised that they were missing.
27. She candidly admitted she did not know who had broken the locks. She had no idea whether it was Jia, Mr Black or the Applicant.
28. With regard to the blocked drains she had referred to in her email to the Applicant of 2 May 2020, she explained that she only discovered the washing machine was broken at the beginning of September when she was going through the landlord registration process with Glasgow City Council, 7 months after the Applicant had left. She could not say that had been caused by the Applicant.
29. In cross examination by the Applicant, Dr Samiei explained that as she had carried out an investigation. Only Mr Black had replied. She explained therefore

that she had divided her losses for lost rental of £3900 between the Applicant and Jia as set out in her email to the Applicant dated 2 May 2020. She felt that Jia also owed her money. Mr Black looked after her possessions.

30. During questioning from the Tribunal she stated that had not been in the Property when Jia and Mr Black had left. She conceded that she did not know the condition of Jia's room when he left, but claimed that it had been destroyed. She conceded she did not know the condition of Mr Black's room. When asked why she was holding the Applicant responsible for the state she found those rooms in when she returned she explained that she was holding the Applicant and Jia both responsible. She was not just holding the Applicant responsible. Mr Black was the only one to reply to her emails as he was honest and she could therefore only eliminate him from her investigation.
31. She accepted that she had asked the Applicant to carry out viewings of Jia's room. She had assumed it was in good condition. She felt that the one thing Jia did wrong was that he did not lock his door when he left. She explained she always told her tenants where the keys were. She could not explain to the Tribunal why anyone who had access to the rooms with a key would break the locks.

Findings in Fact

32. The Applicant and the Respondent entered into a tenancy agreement dated 6 October 2020. This entitled the Applicant to occupy a room in the Property with shared use of the bathroom and kitchen.
33. The Applicant moved into the Property on 6 October 2020. Two other tenants, Jia and Ciaran Black also lived in the Property. The Applicant lived in the Property from 6 October 2019 – about 3 February 2020.
34. The Respondent is a registered landlord with Glasgow City Council.
35. The Applicant paid the Respondent £500 deposit. The Respondent did not lodge the deposit with a scheme administrator.
36. Clause 3 of the tenancy agreement stated the deposit was for the *“payment of unpaid heating and lighting, any telephone charges and damages to the premises and their contents.”* Clause 6 stated *“Refusing to check out the inventory by the tenants will result in the loss of the deposit”*
37. No inventory was taken by the Respondent of the Applicant's room or the kitchen or bathroom.

38. The Respondent is a UK resident. She was present in the Property for a few days after the Applicant moved in at which point she moved out.
39. The Respondent did not live in the Property with the Applicant throughout his tenancy.
40. The Respondent let out three rooms in the Property when she was not resident in the Property. When she was resident in the Property, the Respondent on occasions would let out one room and keep the other rooms free for family to visit.
41. The Applicant, Jia and Mr Black did not use locks on their bedroom doors and had access to each other's bedrooms, the kitchen and bathroom. The living room and the Respondent's bedroom were locked at the start of the Applicant's tenancy. The Respondent's bedroom and living room were not part of the Applicant's tenancy agreement.
42. Mr Black with the Respondent's permission moved from a small room downstairs in the Property into the Respondent's bedroom. Mr Black unscrewed the lock on her bedroom door and moved into the Respondent's bedroom. There was an airing cupboard in the Respondent's bedroom where she stored personal items such as towels and bed linen. The Applicant, Jia and Mr Black had access to all four bedrooms as well as the kitchen and bathroom at that stage.
43. The Applicant did not sublet Mr Black's first bedroom being the small downstairs bedroom.
44. Jia moved out in November/December 2019 and left his room unlocked. He left the key and the padlock on a table. Jia left bedding and other personal items in his room.
45. The Respondent did not carry out an inspection to assess the condition of Jia's room after Jia moved out. Neither the Applicant or Mr Black disturbed Jia's room after his departure.
46. The Respondent advertised Jia's room after his departure. She asked the Applicant to show prospective tenants round the flat. A girl answered the advert, but after viewing the Property advised the Applicant she was not interested.

47. The Applicant did not sublet Jia's room and did not make any money from doing so.
48. Mr Black moved out on 18 January 2020. The Respondent did not carry out an inspection of Mr Black's room to assess its condition after he moved out.
49. The Applicant did not sublet Mr Black's second bedroom and did not make any money from doing so.
50. Between 18 January 2020 – 2 February 2020 the Applicant lived in the Property on his own.
51. The Respondent returned to the Property on 2 February 2020. She found Jia's room in disarray with some of her personal items including bed linen and clothes present in the room. She found other used bedding, towels and other personal items in other bedrooms. She found some locks broken.
52. The Respondent blamed the Applicant for the state of bedrooms and accused him of having people live in the rooms without her permission, of making money for doing so, of damaging the locks and of using her personal bed linen, towels and clothes.
53. The Respondent gave the Applicant notice to leave on 3 February 2020. The Applicant moved out immediately. He moved the last of his possessions from the Property on 16 February 2020.
54. The Respondent did not ask the Applicant to check out any inventory of his bedroom, the kitchen or bathroom. The Applicant did not refuse to check out any inventory.
55. The Applicant did not damage the door locks.
56. The Applicant did not use the Respondent's personal bed linen, towels and clothes.
57. The Applicant did not steal a tile cutter, electric saw or electric drill from the Property.
58. The Applicant is not responsible for causing or the cost of repairs relating to blocked drains or standing water.
59. The Respondent has not basis to withhold repayment of the Applicant's deposit.

Reasons for Decision - Jurisdiction

60. The Respondent's position at the CMD was that the tenants were lodgers, that she did not require to be registered as a landlord, that the Property was not an HMO and she did not therefore need to comply with the Tenancy Deposit (Scotland) Regulations 2011. The Respondent was candid enough to advise the Tribunal at the start of the Hearing that since the CMD she had registered as a Landlord with Glasgow City Council from 7 September 2020. It appeared to the Tribunal she equated being a "resident" landlord with being a UK tax payer and being entitled to live in the UK. Whilst the Tribunal has no doubt that she is a UK resident and tax payer, the relevance of the matter was whether she was a resident landlord in the sense that she lived in the Property with the Applicant and shared it with him while he lived there. That would then determine whether the Tribunal had jurisdiction to determine the application.
61. The Tribunal is satisfied both on the evidence of the Applicant and the evidence of the Respondent that she did not live in the Property while the Applicant lived there. This was corroborated by Mr Black who gave evidence that the Respondent did not live there and in fact it appeared that he had moved into her locked bedroom with her permission until he moved out on 18 January 2020. For the period the Applicant resided in the Property, she did not live there, but lived in France where she had another property.
62. There was agreement between the parties that the tenancy agreement lodged by the Applicant was the agreement that governed the contractual relationship between them. It was headed "Tenancy Agreement" and contained all 4 essential elements in law to form a lease, namely the parties, the property, rent and the duration. Despite the Respondent's bedroom and living room being excluded from the tenancy agreement, the Tribunal was satisfied that the Property was let as a separate dwelling and that the manner in which it was used by the Applicant and the two other tenants was indicative of that. All three tenants had access to each other's bedrooms and the kitchen and bathroom. Whilst the Tribunal accepted the evidence of the Respondent that she would live in the Property when she was in the UK and would on occasions rent out a room and keep the other rooms free for her family, the Tribunal was satisfied that this was not the position when the Applicant lived in the Property. The

Tribunal was satisfied that the Respondent had no intention of living in the Property whilst she had rented it out to the Applicant, Jia and Mr Black. If she had indeed been a “resident” landlord it is hard to see how the Applicant could have sublet any of the other rooms without her permission and resulting in lost rental to her as she claimed. She would not have asked the Applicant to show prospective tenants Jia’s room had she been “resident”. If she had been a “resident” landlord it is hard to see why she would have let her personal possessions be used by other people without her permission when that had understandably upset her or how other people would be able to do so if she was living in the Property. There was no doubt in the Tribunal’s mind that the relationship between the Applicant and Respondent was one of tenant and landlord and not lodger and landlord and that the Respondent did not live in the Property during the tenancy.

63. All private residential tenancy agreements entered into after 1 December 2017 are private residential tenancies under Section 1 of the Private Housing (Tenancies) (Scotland) Act 2016. As the tenancy agreement was dated 6 October 2019 it follows that the tenancy agreement between the parties was a private residential tenancy agreement in terms of Section 1 of the Private Housing (Tenancies) (Scotland) Act 2016. It did not fall to be excluded under Schedule 1, paragraphs 7-11 for the reasons stated above.
64. Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 provides that-

“(1) In relation to civil proceedings arising from a private residential tenancy—

(a) the First-tier Tribunal has whatever competence and jurisdiction a sheriff would have but for paragraph (b),

(b) a sheriff does not have competence or jurisdiction.

(2) For the purposes of subsection (1), civil proceedings are any proceedings other than—

(a) the prosecution of a criminal offence,

(b) any proceedings related to such a prosecution.”

The Tribunal is therefore satisfied it has jurisdiction to determine whether in all the circumstances the Applicant is entitled to repayment of his deposit under the tenancy agreement between the parties.

In the circumstances the Tribunal proceeded to determine the application for the return of the deposit under Rule 111 of the Regulations.

Reasons for Decision - Return/withholding of the Deposit

65. The Respondent's reasons for withholding the return of the deposit to the Applicant were that –

- He had illegally sublet rooms in the Property for which she had lost rental income of £3900.
- He had stolen a tile cutter, electric saw and an electric drill
- He had caused damage to locks
- He had used her personal bed linen, towels and clothes
- He had caused the drains to be blocked resulting in standing water.

The Respondent had originally raised these issues with the Applicant in her email of 2 May 2020.

The Respondent also relied on Clause 6 of the tenancy agreement as a reason for withholding the deposit with reference to the inventory.

66. With reference to the Respondent's contention that the Applicant had sublet rooms in the Property and made money from doing so which was rightly hers, the Tribunal was satisfied that there was no evidence that the Applicant had done so. The Applicant denied that and was corroborated by Mr Black who did not see any evidence of subletting when he lived in the Property. The Respondent had no evidence to show that the Applicant had done so. Her explanation to the Tribunal that was that she had carried out an investigation after she had discovered the bedrooms in disarray with her personal items having been used, only Mr Black had replied and therefore that she had divided her losses for lost rental of £3900 between the Applicant and Jia as set out in her email to the Applicant dated 2 May 2020. However that explanation did not show that the Applicant had in fact sublet any room. Her explanation appeared to be nonsensical as she was also attempting to hold Jia responsible for lost rental income when he could not have been responsible for any alleged subletting as he had vacated the Property. Her explanation was not credible and had no foundation for holding that the Applicant had sublet the room.

67. In any event, subletting was not a reason for withholding the return of the deposit under Clause 6 of the tenancy agreement. Clause 6 stated "*Refusing to check out the inventory by the tenants will result in the loss of the deposit*". That

was the only clause in the agreement which specifically provided for the withholding of the deposit. Clause 3 of the tenancy agreement stated the deposit was for the *“payment of unpaid heating and lighting, any telephone charges and damages to the premises and their contents.”* The deposit had not been taken by the Respondent to cover any lost rental income by subletting. The Tribunal had pointed out to the Respondent at the CMD that if she had incurred any alleged losses for rental as she claimed she would require to bring a separate action against the Applicant.

68. There was no evidence that the Applicant had refused to check out any inventory under Clause 6. The evidence was that no inventory had been taken at the start of the tenancy of the Applicant’s room, kitchen or bathroom. Whilst there was evidence that the Respondent had asked the Applicant and Mr Black to send her photographs of their rooms, there was no evidence as to the purpose of these photographs. The Respondent’s evidence was that these photographs were enough, presumably to form an inventory. Neither party gave evidence that there had been any photographs taken of the bathroom or kitchen. There was no evidence from either party what the photographs the Applicant took showed by way of the condition of his bedroom or its contents and how that then differed to the condition after the Applicant had left.
69. With regard to the contents, the only evidence led of missing or damaged items from the Applicant’s bedroom was a tile cutter which the Respondent claimed the Applicant had stolen. She also claimed he had stolen an electric saw and drill which had been kept in a drawer in the lounge. However she had no evidence to show that the Applicant had done so. Where the Applicant has given evidence that he did not steal these items and without any evidence to show that he did steal these items, the Tribunal is not in a position to hold the Applicant responsible for their absence particularly when the evidence showed that the tenants and possibly their visitors had access to all the other bedrooms. The Tribunal accepted the evidence of the Applicant that the Respondent had not asked him to check out any inventory. The Respondent did not lead any evidence to suggest otherwise. In those circumstances, the Respondent has no contractual right to rely on Clause 6 as a reason for not paying back the deposit to the Applicant particularly when no inventory at the start of the tenancy had been taken.
70. Despite Clause 6 not specifically entitling the Respondent to withhold the deposit for damages, the Tribunal was of the opinion that the Respondent would be entitled to do so on a fair reading of the tenancy agreement as a whole. However to be able to do so, the Respondent would have to have evidence that

the damage was caused by the Applicant. There was no evidence that the Applicant had caused damage to the locks or had used the Respondent's personal linens and clothes. The Respondent candidly admitted in evidence that she did not know who had broken the locks. On the evidence the Tribunal was not satisfied that the Applicant had used any of her personal linens or clothes. It was clear from the evidence of Mr Black that some of these items were in Jia's room after Jia left. The Tribunal accepted the evidence of Mr Black that after Jia left, they did not bother with Jia's room other than turning off the heater. The Respondent did not lead any evidence that such items had been found in the Applicant's room. The Tribunal was not satisfied that the Respondent could make an assumption that the Applicant was responsible for the use of her personal items. The Tribunal formed the impression that the Respondent liked Mr Black as he had "looked after" her clothes, but had absolutely no foundation for holding the Applicant responsible for the use of these items. Even had there been evidence that the Applicant had damaged the locks and used the Respondent's personal linens and clothes, there was no evidence before the Tribunal to show that the Respondent had replaced these items or vouching to show the cost of these. Without that evidence the Tribunal cannot uphold the Respondent's position.

71. The final reason for withholding the deposit given by the Respondent was that she held him responsible for blocked drains and standing water. No evidence was led in this regard other than the Respondent stating that some 7 months after the Applicant left she discovered the washing machine was broken. That does not show that the Applicant was responsible for any blocked drains. She had no evidence that the Applicant had acted in such a way as could be shown to have been negligent so have to cause the drains to be blocked. She produced no vouching to show the costs of remedying the problem with the drains. In any event had the drains been blocked at the Property resulting in standing water that would be her responsibility as a Landlord under the Repairing Standard to remedy.

72. Whilst the Tribunal has proceeded to determine this matter under Rule 111 of the Regulations as the Applicant advised at the CMD he did not wish to proceed with a case under the Tenancy Deposit Schemes (Scotland) Regulations 2011, the Tribunal is very clear that the Respondent should have lodged the Applicant's deposit with a scheme administrator under the 2011 Regulations, the tenancy being a relevant tenancy under those Regulations. This would have avoided the need for the Applicant to have to raise this application.

Decision

73. The Tribunal grants an order for payment of £500 by the Respondent 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.

7 November 2020

Shirley Evans

Legal Chair

Date