

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/23/1983

Re: 3 Sighthill Street, Edinburgh EH11 4QQ ("Property")

Parties:

Rowan Hamilton, 14 Kirkhill Drive, Edinburgh EH16 5DW ("Applicant")

Norman Blair, 43/6 Deanhaugh Street, Edinburgh ("Respondent")

Tribunal Members:

Joan Devine (Legal Member)

Decision :

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined to dismiss the Application.

Background

The Applicant made an application in Form G ("Application") dated 18 June 2023 under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("Rules") stating that the Respondent had failed to timeously lodge a tenancy deposit in an appropriate scheme in breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("2011 Regulations"). The documents produced to the Tribunal by the Applicant were:

- A tenancy agreement dated 1 and 28 March 2021 which commenced on 1 March 2021.
- Email from My Deposits Scotland to the Applicant dated 10 May 2023 stating they did not hold a deposit for the Applicant regarding the Property.
- Email from Safe Deposits Scotland to the Applicant dated 10 May 2023 stating they did not hold a deposit for the Applicant regarding the Property.
- Notification from Letting Protection service stating they did not hold a deposit for the Applicant regarding the Property.
- Copy text message dated 23 March stating the Applicant would vacate the Property on 30 April.
- Copy undated text messages referring to payment of a deposit.

- Copy email from the Respondent to the Applicant dated 16 February 2021 stating that the tenancy would commence on 1 March 2021, referring to receipt of a payment that day of £800, the rent being £800 per month and a payment of £800 being due on 1 March 2021.

The Respondent lodged a written representation by email dated 27 July 2023 in which he stated that no deposit had been paid, that the £800 paid on 1 March 2021 was in respect of the rent for the last month of the tenancy and that the Respondent had occupied the Property for 26 months and had paid a total of 26 payments of £800.

Case Management Discussion ("CMD")

A CMD took place on 14 August 2023 by conference call. The Applicant and the Respondent were both in attendance.

The Applicant told the Tribunal that the tenancy had commenced on 1 March 2021 and that she had moved out around 16 April 2023. The Tribunal noted that a text message dated 23 March had been lodged which referred to the tenancy ending on 30 April. The Applicant confirmed that the text was sent on 23 March 2023 and referred to the tenancy ending on 30 April 2023. The Tribunal asked the Applicant when she made her last rental payment. She said that the rent was paid around the 21st of each month in respect of the rent due on the 1st of the following month. She said that as the rent for the final month had been paid at the beginning of the tenancy she paid her last rental payment on 21 February 2023 in respect of the rent due on 1 March 2023. The Applicant agreed that she had occupied the Property for 26 months and had paid 26 payments of £800 in respect of rent.

The Tribunal drew the Applicant's attention to the terms of the tenancy agreement and noted that the section headed "Deposit" had "N/A" written over it. The Tribunal also noted that the tenancy agreement stated that £800 was to be paid on 16 February 2021 in respect of the period 1.3.21 to 31.3.21 and that £800 was due on 1.3.21 for the final month of the tenancy. The Tribunal noted the Applicant's signature on page 27 and asked the Applicant to confirm if that was her signature. The Applicant said she did sign the tenancy agreement. The Tribunal asked the Applicant if she read the tenancy agreement. She said that she did not.

The Respondent told the Tribunal that he treated the payment of £800 on 21 February 2021 as being rent in advance. He said that the Applicant had not returned the Property in a satisfactory state and he had made an application to the Tribunal in that regard.

The Applicant said that she believed the deposit would be placed in an approved scheme which would mean that a mediation process would be available if a dispute arose at the end of the tenancy.

The Tribunal drew the attention of the Parties to the decision in *Cordiner v Al-Shaibany* 2015 SLT (Sh Ct) 189. The Tribunal explained that the facts in that case were the same as the current case in that at the start of the tenancy the tenant had paid the rent for the first and last month. The Tribunal explained that the Court held that the advance payment of rent was not

a tenancy deposit within the meaning of section 120 of the Housing (Scotland) Act 2006 and therefore the 2011 Regulations were not engaged.

The Tribunal asked the Applicant to comment on the Cordiner case. The Applicant said that the decision was wrong. She said that the Respondent was using the law to benefit himself. She said she had been unaware that she would lose her rights if the payment was used as the rent for the final month of the tenancy.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a tenancy agreement which commenced on 1 March 2021.
2. The Applicant's mother paid to the Respondent £800 on 16 February 2021.
3. The Applicant paid to the Respondent £800 on 1 March 2021.
4. The tenancy lasted for a period of 26 months.
5. The Applicant made 26 payments of £800 in respect of rent.
6. The rent for the first month of the tenancy was paid on 16 February 2021.
7. The rent for the final month of the tenancy was paid in advance on 1 March 2021.

Findings in Fact and Law

The Tribunal made the following findings in fact and law :

1. The Applicant paid to the Respondent rent in advance.
2. The Applicant did not pay to the Respondent a deposit within the meaning of Section 120 of the Housing (Scotland) Act 2006.

Reasons for the Decision

The tenancy agreement signed by the Parties stated that the payments of £800 made on 16 February and 1 March 2021 were payment of rent in advance. The Parties agreed that the tenancy was for a period of 26 months and that, in total, 26 payments of £800 had been made.

In *Cordiner v Al-Shaibany* 2015 SLT (Sh Ct) 189 the Court held that payment of the rent for the first and last month of a tenancy at the commencement of the tenancy was an advance payment of rent and was not a tenancy deposit in terms of section 120 of the Housing (Scotland) Act 2006. The Court considered that payment of rent was not held as security for the performance of the tenant's obligations. In paying the first and last month's rent at the start of the tenancy the tenant had discharged the obligation to pay rent for the first and last month.

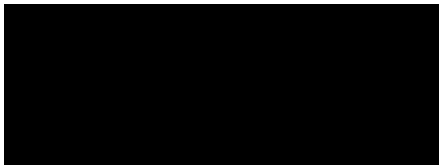
Cordiner v Al-Shaibany has the same factual background as this application. As no deposit was paid in this case, the 2011 Regulations are not engaged and the application falls to be dismissed.

Decision

The Tribunal dismissed the Application.

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.



**Joan Devine
Legal Member**

Date: 14 August 2023