



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/23/0105

Re: Property at 5 Loch Ness Bungalows, Drumnadrochit, IV63 6UU (“the Property”)

Parties:

Ms June Cowan, Eriskay Cottage, Kytra Lock, Fort Augustus, PH32 4BY (“the Applicant”)

Miss Janet Turnbull, Coilty Leisure & Recreation Ltd, Managers House, Lower Balmacaan, Drumnadrochit, IV63 6UW (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

[1] This was an application for a payment order dated 11th January 2023 and brought in terms of Rule 111 (Application for civil proceedings in relation to a private residential tenancy) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

[2] The Applicant sought payment of the tenancy deposit for the Property from the Respondent and provided with her application copies of the private residential tenancy agreement, and various correspondence.

[3] The private residential tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland)*

Act 2016, and the procedures set out in that Act appeared to have been correctly followed and applied.

[4] The Respondent have been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 13th February 2023, and the Tribunal was provided with the execution of service.

[5] A Case Management Discussion was held at 11:30 on 15th March 2023 by Tele-Conference. The Applicant participated, and was not represented. The Respondent's Janet Turnbull participated, and was not represented.

[6] The Tribunal noted that the Respondent's correct designation is Coilty Leisure & Recreation Ltd, which was confirmed by Miss Turnbull. The Applicant asked the Tribunal to allow the Respondent's designation to be amended by adding "Ltd." At the end.

[7] Miss Turnbull did not object, and the Tribunal allowed the amendment in terms of Rule 14A (Request to amend the application in respect of matters other than new issues) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

[8] The Applicant explained that she paid a deposit of £825.00 in cash to Miss Turnbull on taking entry to the Property on 1st February 2019. She then paid monthly rent in cash until moving to paying by bank transfer in August 2019. She had asked for the return of her deposit after the end of the tenancy on 30th November 2022, but the Respondent had failed to repay it.

[9] Miss Turnbull explained that the Respondent denied that the Applicant had ever paid the deposit. The Applicant had made no payment of either the deposit or the monthly rent due until she commenced paying the rent by bank transfer in August 2019. Miss Turnbull queried whether the party participating and identifying herself as the Applicant was truly Ms Cowan. The Applicant confirmed that she was indeed Ms Cowan, but Miss Turnbull indicated that she wished to see the Applicant to confirm her identity.

[10] It was clear that a hearing was required to resolve the factual dispute between the parties, and parties indicated that their preference was for that to be by way of Video-Conference. Both parties confirmed that they had suitable equipment and a reliable internet connection for that purpose. The Respondent accepted that he had incurred rent arrears, but explained that this was due to his loss of income as a result of his recent.

[11] The Tribunal set a Hearing for the above-mentioned reasons, to be conducted by Video-Conference at a date and time to be identified and confirmed to the parties in writing by the Tribunal.

Hearing

[12] A Hearing was held at 10:00 on 18th July and 7th November 2023 by Video-Conference. The Applicant participated, and was not represented. The Respondent's Janet Turnbull participated, and was not represented.

[13] The Tribunal heard evidence from the Applicant and from the Miss Turnbull. That was in relatively short compass, and concerned only the question of whether or not the Applicant had paid the deposit to Miss Turnbull.

Findings in fact

[14] Evidence was led by both parties. After hearing that evidence, the Tribunal found in fact:

- 1) That the Applicant rented the Property from the Respondent from 1st February 2019 until 30th November 2022.
- 2) That the written private residential tenancy agreement provided at clause 10 that a deposit of £825.00 will be paid by the tenant to the landlord.
- 3) That the Applicant paid the deposit to Miss Turnbull at the commencement of the lease in cash.
- 4) That the Respondent did not lodge the deposit in an approved tenancy deposit scheme within 30 days of receipt.
- 5) That the Respondent did not provide the Applicant with a copy of the written private residential tenancy agreement until 28th August 2019.
- 6) That the Respondent has failed to repay the deposit to the Applicant.

The Applicant's evidence

[15] The Applicant gave evidence that she had previously rented a different property from Miss Turnbull's brother. After a previous relationship ended, she required to move to a property with a lower rental.

[16] The Applicant and Miss Turnbull were on very good terms, and the Respondent offered to lease her the Property. The Applicant accepted, and the Respondent assisted her in moving in on 1st February 2019 by providing her with assistance from two local associates of the Respondent who brought a trailer and moved all her heavy furniture and items including her bed, wardrobes and sofas into the Property on that date. The Applicant referred the Tribunal to text messages between her and Miss Turnbull dated 31st January 2019 which narrated this arrangement on that date. The Applicant also referred the Tribunal to her e-mail to the local authority advising them that she was moving to the Property on 1st February 2019 which she sent by e-mail dated 7th February 2019.

[17] The Applicant and Miss Turnbull's previously good relations deteriorated, and she subsequently decided to leave the Property. She gave the Respondent notice of her intention to leave on 30th November 2022 in terms of the lease agreement by e-mail of 1st November 2022. That e-mail was acknowledged and accepted by Miss

Turnbull on 2nd November. The Applicant referred the Tribunal to text messages in that regard.

[18] The Applicant e-mailed Miss Turnbull on 30th November 2022 requesting that she repay the tenancy deposit for the Property into her bank account, the details of which she provided. Miss Turnbull replied by e-mail later that day, in which e-mail she asked the Applicant "Could you provide me with details of the deposit you have mentioned".

[19] Since leaving the Property, the Applicant has asked the Respondent for return of her deposit. The Respondent has refused to return the deposit, asserting that payment of the deposit had been waived at the commencement of the lease.

Miss Turnbull's evidence

[20] Miss Turnbull gave evidence that the lease commenced on 1st April 2019. When questioned regarding the provision of two associates of the Respondent to assist the Applicant with moving her furniture into the Property on 1st February 2019, she accepted that this had occurred, but explained that she had allowed the Applicant to store her furniture at the Property for two months prior to the start of the lease.

[21] Miss Turnbull accepted that the written lease agreement provided for the payment of a deposit of £825.00 at the commencement of the lease. Her evidence was that despite that provision, she had waived payment of the deposit due to her friendship with the Applicant and sympathy for her situation after the end of her previous relationship.

[22] Miss Turnbull denied that she had received payment of the deposit. She explained that her father had passed away around the time of the commencement of the lease and that as a result she was just getting by, but insisted that she was not mistaken in her recollection that no deposit was paid.

[23] Miss Turnbull advised the Tribunal that she acted as letting agent of approximately twenty properties owned by her family, including the Property.

Submissions

[24] The Applicant submitted that the Tribunal should accept her account of events that she paid the deposit of £825.00 to the Respondent, and that she was entitled to repayment thereof.

[25] Miss Turnbull submitted that no deposit payment had been made, and that accordingly no repayment was due to the Applicant.

Statement of Reasons

[26] The jurisdiction of the Tribunal in relation to Private Residential Tenancies, such as that which applied to the Property, is set by statute. Section 71(1) of the *Private Housing (Tenancies) (Scotland) Act 2016* provides:

“First-tier Tribunal's jurisdiction

- (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 accordingly has jurisdiction to hear civil proceedings arising from a private residential tenancy such as between the parties in this application.

[27] The Tribunal accepted both parties as entirely credible. The Tribunal concluded that both the Applicant and Miss Turnbull were doing their best to recall what had taken place at the commencement of the lease.

[28] The Tribunal accepted the evidence of the Applicant as reliable. Her recollection that she paid the deposit in cash was supported by the fact that the lease provided for the deposit to be paid. Both parties lodged a number of documents containing messages between them, none of which indicated that the deposit had been waived.

[29] The Respondent lodged the e-mail from Miss Turnbull of 30th November 2022 which she had sent in response to the Applicant's to her earlier that day. In her response to the Applicant's request to repay the deposit, rather than state that the deposit had been waived and not paid, she instead replied requesting that the Applicant provide her with details of that deposit.

[30] The Tribunal noted that the Applicant had e-mailed Miss Turnbull the year before. In her e-mail to Miss Turnbull dated 1st April 2021, she asked “Can you confirm my deposit is with deposit Scotland as I don't seem to have any correspondence from them?”. The Tribunal has not been provided with any response from Miss Turnbull to that e-mail, but it is again supportive that the Applicant has been consistent in her position that she paid a deposit.

[31] The Tribunal did not accept the evidence of Miss Turnbull as reliable on this issue. She is apparently an experienced letting agent in relation to twenty properties which she manages. The Tribunal would expect her to have kept proper records in relation to those properties, and in particular, of any agreement to waive payment of the deposit. She did not provide any such records in evidence.

[32] Further, she provided no response to the Appellant's e-mail of 1st April 2021 asking her to provide details of the tenancy deposit scheme in which the deposit was lodged, and at the conclusion of the lease when asked for the return of the deposit

did not refer to it having been waived but instead asked for details of the deposit requested.

[33] Finally, she asserted just short of five years after the events, that certain that her recollection that the deposit had been waived could not be mistaken even in circumstances where she advised the Tribunal that she was only getting by around the time the deposit ought to have been paid due to the unfortunate passing of her father.

[34] For these reasons the Tribunal preferred and accepted the evidence of the Applicant that the deposit had been paid, and that accordingly the Applicant is entitled to have that deposit repaid at the conclusion of the lease.

Decision

[35] In these circumstances, the Tribunal made an order for payment by the Respondent to the Applicant of the sum of £825.00.

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.

N Kinnear

07 November 2023

Legal Member/Chair

Date