



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 (1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/22/3889

Re: Property at 1/2 26 Kennedy Path, Glasgow, G4 0PP (“the Property”)

Parties:

Ms Anamika Saha, 7 Castlehill Court, Inverness, IV2 5GS (“the Applicant”)

Mr Ralph - Irfan Suleman Raja, 47 Bernard Terrace, Glasgow, G40 3BQ (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and Leslie Forrest (Ordinary Member)

Decision

Background

[1] The Tribunal made a Payment Order in favour of the Applicant in the sum of £2,585.00 with interest on that sum at the rate of 7 percent per year from today’s date until payment.

[2] The Applicant seeks a Payment Order against the Respondent for sums said to be lawfully retained by the Respondent and which ought to be repaid to the Applicant. These sums are said to comprise a payment of £1,000.00 described by the Respondent interchangeably in the documents produced along with the Application as

“advance/holding fee” and a *“deposit”* and then £1,390.00 paid *‘upfront’* as security for the Applicant’s obligation as a tenant. The Applicant also seeks the return of £195.00 said to have been improperly billed to the Applicant as a *“solicitor’s fee”* for drafting the tenancy agreement. The Applicant also seeks recovery of £305.00 for a rental payment, the basis for which was not immediately apparent.

[3] There have been Case Management Discussions (CMDs) before to resolve issues regarding service of the Application on the Respondent whose whereabouts could not initially be established. Most recently, there was a CMD on 24 August 2023 at which the Respondent was personally present. Detailed notes were prepared along with Directions made which set out case management orders considered necessary by the Tribunal. Reference is made to the terms of those case management notes and Directions. In advance of the Hearing scheduled, it appeared that the Respondent had done nothing whatsoever to comply with those orders.

The Hearing

[4] The Application called for a Hearing in person at 10 am on 20 November 2023 at Glasgow Tribunal Centre. The Applicant was represented by Mr Paul Clementsmith, solicitor. The Respondent was personally present.

[5] The Tribunal raised the issue of the Respondent’s non-compliance with the Directions with the Respondent at the outset. The Respondent produced a customer card from *“Costco”*. The Tribunal explained that the Respondent had been ordered to produce verification of his ID in the form of a copy of his passport or driving licence or a document of similar standing. The Tribunal challenged the Respondent that he had not complied with the Direction.

[6] The Respondent appeared disinterested and somewhat aloof about the matter of the Tribunal’s direction. The Respondent was also challenged as to why he had not set out

in writing a detailed response to the Application as directed by the Tribunal. His answers again were dismissive of the importance of complying with such matters.

[7] Having heard from the Respondent, the Tribunal decided that it would not be appropriate now to hear anything further from the Respondent. He had clearly decided not to engage with the Tribunal process and the Tribunal did not consider it appropriate now to let the Respondent participate and make representations without the Applicant or Tribunal having any notice in advance of what he intended to say. The Respondent was informed that he could remain in the Hearing but could have no further direct involvement.

[8] Thereafter the Tribunal discussed certain aspects of the Application with Mr Clementsmith. Having done so, the Tribunal made the following findings in fact.

Findings in fact

- I. *The Respondent let the Property to the Applicant;*
- II. *The Applicant paid a sum of £1,000.00 as a deposit to the Respondent under the tenancy agreement entered into between the parties;*
- III. *In addition to this figure, the Respondent insisted that a further payment of £1,390.00 was paid upfront along with £195.00 as a “solicitor’s fee” for drafting the tenancy;*
- IV. *These sums have been retained by the Respondent following on from the ending of the tenancy. The Respondent had no right to charge the Applicant a solicitor’s fee for entering into the tenancy. Such a fee is an unlawful premium within the meaning of Section 82 of the Rent (Scotland) Act 1982 and is lawfully due to be returned to the Applicant;*
- V. *The Respondent has still not returned the sums held to the Applicant despite the extensive Tribunal procedure;*

- VI. *The Respondent has not complied with case management orders made by the Tribunal and has been dismissive of the process;*
- VII. *The Respondent has offered no defence to the Application or mitigation in respect of his actions;*
- VIII. *The sum of £2,585.00 is lawfully due by the Respondent to the Applicant but remains unpaid.*

Reasons for Decisions

[9] Having made the above findings in fact, the Tribunal made a Payment Order in favour of the Applicant in the sum of £2,585.00 with interest on that sum at the rate of 7 percent per year from today's date until payment. The Tribunal did not accept that the additional head of claim for £305.00 was legitimate. It seemed to relate to a rental charge for a period of time when the Applicant was in occupation of the Property. That appeared to the Tribunal to be a legitimate charge. That head of claim was not successful.

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.

Legal Member/Chair

20 November 2023
Date

