



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)**

**Chamber Ref: FTS/HPC/CV/23/2824**

**Re: Property at 21B Kerrsview Terrace, Dundee, DD4 9BJ (“the Property”)**

**Parties:**

**Mr Bernard Ojigho, Mrs Eniye Ojigho, 85 Watson Street, Dundee, DD4 6HF (“the Applicant”)**

**Mr Faisal Naseem, Mr Mohammed Saleem, UNKNOWN, UNKNOWN (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment by the Respondent in the sum of £366.67 should be made in favour of the Applicant.**

**Background**

1. By application received on 21 August 2023, the Applicant applied to the Tribunal for an order for payment against the Respondent in the sum of £366.67, being the balance of the tenancy deposit of £1000 which the Applicant considered due to them. Supporting documentation was lodged in respect of the application, including a copy of the tenancy agreement and proof of payments made by the Applicant to the Respondent. A second application under Rule 103 seeking a payment order in respect of an alleged breach of the tenancy deposit scheme regulations by the Respondent was also lodged, together with this application and is being dealt with under reference FTS/HPC/PR/23/2823.

2. Following initial procedure, on 21 August 2023, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. An initial Case management Discussion (“CMD”) was fixed to take place on 30 October 2023 but was subsequently cancelled due to Sheriff Officers not being able to effect personal service on the Respondent at the address provided on the application. The Respondent’s address was amended to the “unknown” and a further CMD was fixed for 17 November 2023. Details of the application and the CMD were thereafter advertised on the Tribunal website for the requisite period in advance of the CMD and email notification of same was also sent to the Respondent’s letting agent whom the Sheriff Officers had also spoken to when initially attempting to effect service. No representations were lodged for, or on behalf, of the Respondent prior to the CMD.

### **Case Management Discussion**

4. The CMD took place by telephone conference call on 17 November 2023 at 10am, attended only by Mr Keith Wilson of Help Tenants Dundee, the Applicant’s representative. There was no appearance for the Respondent, although the commencement of the CMD was delayed for 5 minutes to allow an opportunity for them to join late.
5. After introductions and introductory remarks by the Legal Member, the Applicant’s representative was asked to state the Applicant’s position in respect of the application. Mr Wilson confirmed that the Applicant was seeking a payment in respect of the balance of the tenancy deposit the Applicant considered they were due to have returned to them at the end of the tenancy. Reference was made to the terms of the application and the supporting documentation lodged with the Tribunal.
6. Mr Wilson explained the background to the matter. The tenancy commenced on 8 March 2023 and the rent was £1,000 per calendar month. The tenancy deposit was also £1,000 and the deposit and first months’ rent were paid by the Applicant to the Respondent by way of two payments of £1,500 and £500 on 2 and 8 March 2023. A further payment of £1,000 in respect of rent was paid on 14 April 2023 in respect of the second month’s rent. Due to problems arising very quickly with the tenancy, particularly regarding the condition of the Property and unexpectedly high heating costs, the Applicant served 28 days’ notice in writing on 25 April 2023 to terminate the tenancy on or around 24 May 2023. The Applicant vacated the Property prior to 24 May 2023 and this was known to the Respondent. A dispute arose regarding return of the deposit. The Applicant accepted that they had only paid rent to cover the period up to 7 May 2023 and were due to pay some further rent in lieu of the notice period but considered that they were still due a partial refund of their deposit of £1,000, which they requested from the Respondent. However, the Respondent refused to return any of the deposit and has retained the whole

deposit of £1,000. The Applicant subsequently found out that the Respondent had not placed the deposit in any of the tenancy deposit schemes so could not seek back any of their deposit that way. The Legal Member asked how the sum of £366.67 stated in the application had been calculated, which Mr Wilson explained. He also advised that he had discussed matters with the Applicant in recent weeks and that they had not had any communication from the Respondent, not received any payments from them.

7. The Legal Member indicated that she would grant the payment order sought today. The Procedure to follow was explained and Mr Wilson was thanked for his attendance.

### **Findings in Fact**

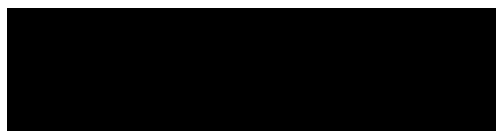
1. The Respondent is the owner and landlord of the Property.
2. The Applicant was the tenant of the Property by virtue of a Private Residential Tenancy commencing on 8 March 2023, which ended on or around 24 May 2023.
3. The Applicant paid a tenancy deposit of £1,000 at the outset of the tenancy, in accordance with the terms of the tenancy agreement.
4. The Applicant served written notice on the Respondent on or around 25 April 2023 in order to terminate the tenancy on or around 24 May 2023.
5. The Applicant vacated the Property prior to 24 May 2023.
6. The rent in terms of the tenancy was £1,000 per calendar month, payable in advance.
7. The Applicant had paid rent to cover the period up to on or around 7 May 2023.
8. The Applicant was still due to pay rent to the Respondent to cover the period 8 May 2023 to 24 May 2023.
9. The Applicant requested return of the balance of the deposit due to them, after deduction of the rent due.
10. The Respondent refused and has retained the whole of deposit of £1,000.
11. The sum of £366.67 is due and resting owing by the Respondent to the Applicant.
12. The Respondent did not engage in the Tribunal process, nor attend the CMD.

## Reasons for Decision

1. The Legal Member considered all of the background papers, including the application and supporting documentation and the oral submissions made by the Applicant's representative at the CMD. The Legal Member noted that no representations had been made by the Respondent and that he did not attend the CMD, having been properly and timeously notified of same. The Legal Member considered that there was nothing to contradict the information from the Applicant and therefore no requirement to continue the application to an Evidential Hearing. The Legal Member was satisfied that, in the circumstances, a payment order in terms of the application could properly be made at the CMD.
2. The Legal Member was satisfied from the information before her that the sum of £366.67 is due and resting owing by the Respondent in respect of the balance due to the Applicant from the £1,000 deposit paid by the Applicant at the outset of the tenancy. The Legal Member noted from the supporting documentation produced that the Applicant had paid a deposit of £1,000 and their first two months' rent in full and that this covered the period from the start of the tenancy on 8 March 2023 until 7 May 2023. It was noted that the Applicant had served notice in writing of their wish to terminate the tenancy by email on 25 April 2023, in accordance with the terms of the tenancy agreement and that this email was responded to by or on behalf of the Respondent on the same date. Taking into account the calculation of the 28 day notice period from the date notice was deemed to have been given (48 hours after the email was sent), it appeared to the Legal Member that the tenancy terminated on or around 24 May 2023 and that the Applicant had therefore been due to pay rent to cover the period 8 May 2023 to 24 May 2023. The Legal Member's calculation of the rent due and thereby to be deducted from the £1,000 deposit was very slightly less than that calculated by the Applicant's representative. However, the Legal Member was of the view that she could not make a payment order in excess of the sum claimed in terms of the application. Accordingly, the Legal Member considered it appropriate to grant a payment order in the sum claimed of £366.67.

## 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

17 November 2023  
Date

