



**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/23/2119**

**Re: 43 Chacefield Street, Bonnybridge FK4 1PS (“the Property”)**

**Parties:**

**Clair Kane, 10 Beech Crescent, Westquarter, Falkirk FK2 9RU (“Applicant”)**

**Patrick Flood, Maria Theresa Apartment Block, Calle Antonia Gala, Malaga, 2691, Spain (“Respondent”)**

**Tribunal Members:**

**Joan Devine (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined that an order for payment of £550 plus interest thereon at the rate of 4% per annum from 18 January 2024 until payment should be made.**

**Background**

1. The Applicant sought an order for payment of £550 plus interest. The Applicant had lodged Form F along with the following supporting documentation :
  - A private residential tenancy agreement (“PRT”) between the Applicant, the Respondent dated 5 June 2018 and which commenced on 6 June 2018.
  - A notice to leave dated 13 January 2023 asking the Applicant to vacate the Property on 10 April 2023.
  - Screenshots of text messages between the Parties including one dated 18 May 2018 noting that the deposit had been received.
  - Email from Safe Deposits Scotland dated 24 April 2023 stating that they do not hold a deposit on the basis of the information provided.
  - Email from Mydeposits Scotland dated 4 May 2023 stating the Applicant’s deposit was not protected by their scheme.

- Email from Letting Protection Scotland dated 11 May 2023 stating the Applicant's deposit was not protected by their scheme.
2. A Case Management Discussion ("CMD") was fixed for 27 September 2023. In advance of the CMD the Applicant advised the Tribunal that she would not attend the CMD and that she wished the Tribunal to proceed in her absence. In response to a query from the Tribunal she said that the tenancy ended on 10 April 2023.
  3. The Respondent did not attend the CMD. It was apparent that the Application and notice of the date of the CMD had not been served on the Respondent. The Tribunal fixed a continued CMD to allow the Application to be served and the date intimated to the Respondent.

### **Continued CMD**

4. A continued CMD took place on 18 January 2024 by conference call. The Application and notice of the date of the continued CMD had been served on the Respondent by advertisement on the Tribunal website between 24 November 2023 and 18 January 2024. Neither the Applicant or the Respondent was in attendance. The Applicant had made clear that she did not wish to attend a CMD due to health issues and was content for the Tribunal to proceed in her absence. The Tribunal was satisfied that notice of the CMD had been given to the Respondent and determined to proceed to consider the application on the basis of the material lodged by the Applicant

### **Findings in Fact**

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a tenancy agreement which commenced on 5 June 2018.
2. The tenancy came to an end on 10 April 2023.
3. The Applicant paid to the Respondent a deposit of £550 on or about 18 May 2018.
4. The deposit was not paid to the administrator of an approved scheme in compliance with the 2011 Regulations.
5. The deposit was not returned to the Applicant at the end of the tenancy.

## **Reasons for the Decision**

5. The Tribunal had sight of text messages which evidenced that the Applicant had paid a deposit of £550 to the Respondent on or about 18 May 2018. The Tribunal had sight of a tenancy agreement between the Parties which commenced on 5 June 2018 and of a Notice to Leave which terminated the tenancy as at 10 April 2023. The Tribunal had sight of text messages between the Parties in which the Applicant asked for her deposit to be returned and the Respondent said "*I'm afraid there will be money coming off deposit for damages and cleaning when I have final bill I will refund rest of deposit*" and "*If you want to take this further you are welcome to do so*". In the Application the Applicant said the deposit had not been returned. The evidence before the Tribunal indicated that the deposit had not been returned to the Applicant at the end of the tenancy.
6. The Respondent made no representations to the Tribunal and did not lodge any documents. The Tribunal had no evidence before it to suggest that the Respondent was entitled to withhold any part of the deposit. In those circumstances the Tribunal determined to grant an order for payment of the full amount of the deposit by the Respondent to the Applicant. The Applicant had sought interest. 4% per annum is a reasonable rate.

## **Decision**

The Tribunal grants an order for payment of £550 plus interest thereon at the rate of 4% per annum.

## **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**

**Date : 18 January 2024**