

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 Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”)

Chamber Ref: FTS/HPC/CV/23/1673

Re: Property at 6/4 Lonsdale Terrace, Edinburgh, EH3 9NN (“the Property”)

Parties:

Mr Sairam Vadlamudi, 2/5 Wardieburn Street, Edinburgh, EH5 1EG (“the Applicant”) per his agents University of Strathclyde Law Clinic, University of Strathclyde Law Clinic 40 George Street, Glasgow, G1 1QE (“the Applicant’s Agents”)

Edinburgh Rent Ltd, PO Box 22, 2 Corstorphine High Street, Edinburgh, EH12 7ST (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Jane Heppenstall (Ordinary 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 in the sum of TWO HUNDRED AND FIFTY POUNDS (£250.00) Sterling be granted.

Background

1. By application received on 24 May 2023 (“the Application”), the Applicant’s Agents on behalf of the Applicant applied to the Tribunal for an Order for payment of £250.00 being a tenancy deposit paid by the Applicant to the Respondent and which had not been repaid to him at the end of the tenancy. The Application comprised a statement explaining that the Applicant had been a tenant of the Property in terms of Section 1 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. The Application was accepted by the Tribunal and a Case Management Discussion (the “CMD”) was fixed for 24 August 2023 at 14.00 by telephone conference to be heard alongside application FTS/HPC/PR/23/1677 made by the Applicant against

the Respondent in respect of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”).

3. Prior to the CMD both Parties submitted written representations. The Applicant’s Agents submitted screen shots of messages between the Parties and copy bank receipt purporting to show that rent and a deposit of £250.00 had been paid by the Applicant to the Respondent. The Respondent submitted a statement stating that the agreement between the parties was a holiday let and not a private rented tenancy agreement. The Respondent lodged an agreement to this effect signed by the Parties. The Respondent stated further that the Applicant had used the Property for the purpose of storage. The Respondent appeared to accept that the Applicant had paid a deposit of £250.00. The Respondent stated that they had refunded one half of the deposit to the Applicant, being the sum of £112.50.

4. The outcome of the CMD was that a Hearing of evidence in respect of the following matters was fixed:
Was the agreement entered into between the Parties a short term let or a tenancy agreement and so does the Tribunal have jurisdiction?
If the Tribunal has jurisdiction, did the Respondent repay one half of the deposit to the Applicant?

Direction

1. The Tribunal issued the following Direction:
“The Applicant is required to:
 - i) *provide documentary evidence to show that he resided in the Property as his as his only or principal residence during January 2023 and*
 - ii) *provide the advert to which he replied or details of the agency to which he applied to obtain occupancy of the Property and*
The Respondent is required to provide documentary evidence:
 - i) *to show that the Property was a short term or holiday let;*
 - ii) *of how the Respondent let the Property to the Applicant;*
 - iii) *to show that the Applicant did not reside at the Property but used the Property for storage.*

The said documentation should be lodged with the Chamber no later than close of business fourteen days before the date of the Hearing which is to be fixed.”

5. The Applicant complied with the Direction, albeit late, and submitted an indexed and paginated Bundle of productions.

6. The Respondent did not comply with the Direction to any extent.

Hearing

7. A Hearing was fixed for 5 March 2024 at 10.00 by telephone and intimated to the Parties.

8. Prior to the Hearing, the Applicant's Agents requested a postponement of the Hearing as the representative allocated to the case was not available to attend. The request complied with Rule 28 of the Rules and was intimated to the Respondent.
9. The Respondent wrote to the Tribunal to ask if a soul and conscience certificate had been provided but did not state if the motion to postpone was opposed.
10. The Tribunal wrote to both Parties as follows: To the Applicant's Agents: "*Can you please confirm the attempts you have made to secure a replacement representative and if you have been able to do so?*" and to the Respondent: "*Can you please confirm and clarify if you oppose the postponement request as it is not clear from your email?*" Both Parties were advised that the Hearing would proceed as scheduled unless otherwise notified.
11. The Applicant's Agents responded that a replacement representative had been sourced and that they were ready to proceed with the Hearing.
12. The Respondent wrote to the Tribunal as follows: "*Unfortunately we are unavailable now. Given we received an email from a solicitor telling us they needed to cancel we have made further arrangements and cancelled the diary hold You will require to issue a new date.*"
13. The Tribunal wrote to the Respondent, with a copy to the Applicant's Agents, as follows: "*The Tribunal notes the content of your email of 1 March. It is for the Tribunal and not the Parties to decide if a Hearing is to be adjourned or postponed. The correspondence from the Tribunal administration made it clear that the Tribunal had not made a decision on the Applicant's Rule 28 request. If you intend to ask the Tribunal to postpone or adjourn, you should follow the procedure as set out in Rule 28 as undernoted. Adjournment or postponement of a hearing 28.— (1) The First-tier Tribunal at its discretion may, on its own initiative or on an application by a party, at any time, adjourn or postpone a hearing. (2) Where a party applies for an adjournment or postponement of a hearing, that party must (a)if practicable, notify all other parties of the application for an adjournment or postponement; (b)show good reason why an adjournment or postponement is necessary; and (c)produce evidence of any fact or matter relied on in support of the application for an adjournment or postponement.(3) The First-tier Tribunal may only adjourn or postpone a hearing at the request of a party on cause shown.(4) If the reason for such an adjournment or postponement is to allow the party more time to produce evidence, the First-tier Tribunal may only adjourn or postpone the hearing if satisfied that (a)the evidence relates to a matter in dispute;(b)it would be unjust to determine the case without permitting the party to produce the evidence; and (c)where the party has failed to comply with directions for the production of the evidence, the party has provided a satisfactory explanation for that failure.*"

14. The Respondent did not reply and did not make an application for an adjournment or postponement.
15. The Hearing took place on 5 March 2024 at 10.00 by telephone. The Applicant was present and represented by Ms. Kaur of the Applicant's Agents, supported by her colleague, Mr. Gillanders.
16. The Respondent was not present and was not represented. The Tribunal took the view that the Respondent was fully aware that the Hearing had not been postponed or adjourned and that the Hearing would take place as intimated to the Parties. The Tribunal took the view that the Respondent was a commercial entity engaged in the business of residential letting, that it was familiar with the tribunal process and procedure, that it ought to have known that its attendance was required at the Hearing and that it had chosen not to attend. Accordingly, the Tribunal proceeded in the absence of the Respondent.
17. With regard to the late lodging of the Applicant's Direction response and productions, the Tribunal took the view that these contained no new matters and did not contain any material which was not familiar to the Respondent and so admitted these in evidence.

Applicant's Evidence

18. Ms. Kaur led evidence from the Applicant, Mr. Vadlamudi with reference to the Bundle of productions. Mr. Vadlamudi stated that he is an overseas BA Honours student and has employment. He stated that he has been studying in the UK since 2020 and hopes to graduate in 2024. He confirmed that his reason for residing in Edinburgh is for education as a student and not for holiday or leisure purposes.
19. With regard to the Property, Mr. Vadlamudi stated that he saw the Property advertised on Gumtree at a rent of £340.00 per week and contacted the advertiser, Mr. Mark Fortune. He agreed to take a tenancy of the Property without viewing it and paid the deposit of £250.00 on 26 January 2023. He confirmed that the bank statement lodged with the Bundle evidenced this payment. He stated that he understood the entry date to be 3 February 2023 when the first month rent was due, payment of which was evidenced by a further bank statement lodged with the Bundle. He stated that the Property was shared with four other students, each having a bedroom and sharing the other living accommodation, and, that the arrangement was that bills would be shared. He confirmed that he moved in on 3 February 2023. He confirmed further that Mr. Fortune did not reside in the Property.
20. With reference to screenshots of texts and prints of WhatsApp messages lodged with the Bundle, Mr. Vadlamudi confirmed that these are exchanges between Mr. Fortune and himself, relate to the rent and the deposit and show that the intention was not a holiday let but permanent residence. Again with reference to the screenshots of texts and prints of WhatsApp messages, Mr. Vadlamudi's evidence was that the Respondent was threatening and abusive when Mr. Vadlamudi was late with the second month's rent payment and refused to repay the deposit. Mr.

Vadlamudi stated that he had not received any repayment of the deposit and had definitely not been paid one-half of the deposit of £112.50.

21. With regard to the tenancy agreement, Mr. Vadlamudi confirmed that he had signed an agreement with the Respondent but did not have a copy of it. He stated that he signed this after he agreed to lease the Property and after he had paid the deposit and first month's rent.

Respondent's Position

22. As the Respondent was not present, the Tribunal had regard to its written representations that the agreement between the Parties was a holiday let and not a private rented tenancy agreement and so the Regulations do not apply. The Respondent relied on the agreement to this effect signed by the Parties and lodged by the Respondent. The Respondent stated further that the Applicant had used the Property for the purpose of storage but had not provided further information or evidence in support of this. The Respondent stated that he had repaid £112.50 being one-half of the deposit to the Applicant.

Summing Up on behalf of Applicant

23. On behalf of the Applicant, Ms. Kaur submitted that he was a credible and reliable witness who gave his evidence truthfully. With reference to the evidence, she submitted that there was clear evidence that a tenancy deposit had been paid by the Applicant to the Respondent and there was no evidence that any of it had been repaid to the Applicant. She submitted that the Applicant had not been given information on the terms of the deposit lodgement and that no reason was given as to why the deposit was not repaid. With reference to the relevant legislation, she submitted that there was clear evidence that a private residential tenancy had been entered into between the Parties as the Property was let to the Applicant as a separate dwelling, the Applicant occupied the Property as his only or principal home, and there is no evidence that Schedule 1 of the 2016 Act applies. There was no evidence that the Applicant was on holiday or had intended to enter into a short term let: all of the evidence supported a permanent let for a person who was studying and in employment and regarded the property as his principal home.
24. With regard to the tenancy agreement signed by the Applicant, Ms. Kaur pointed out that this had been signed after the tenancy agreement terms had those terms been agreed and did not reflect. Ms. Kaur submitted that, from the evidence and with reference to the cases lodged in the Applicant's Bundle, it was clear that the Respondent had no intention of putting the tenancy deposit in an approved scheme and its sole intention had been to circumvent the legislative protection afforded to the Applicant.

Assessment of the Evidence

25. The Tribunal found the Applicant, Mr. Vadlamudi, to be straightforward and truthful and that he did not seek to exaggerate his position. The Tribunal accepted his evidence in its entirety.
26. In respect of the evidence of the Respondent, the Tribunal had regard to the written submissions. The Tribunal found these written submissions were not an accurate reflection of the facts as the contentions that the tenancy was a holiday let and the Property was used for storage were not borne out by the wording in Mr. Fortune's texts and WhatsApp messages which made reference, in particular, to "all residents" being "students". The Respondent had been directed to lodge documentary evidence to support its position but did not do.
27. With regard to the status of the tenancy and the agreement signed by the Parties, the Tribunal had regard to the wording of Section 1 of the 2016 Act which states: "*Section 1 Meaning of private residential tenancy.(1) A tenancy is a private residential tenancy where (a)the tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling,(b)the tenant occupies the property (or any part of it) as the tenant's only or principal home, and (c)the tenancy is not one which schedule 1 states cannot be a private residential tenancy. (2)A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.*" From the evidence accepted by it, the Tribunal had no difficulty in finding that the tenancy entered into by the Parties was a private residential tenancy. Having so found, it follows that the Tribunal has jurisdiction.

Findings in Fact and Law

28. From the Application, the written submissions, the productions and the Hearing, the Tribunal made the following findings in fact: -
- i) There had been a private residential tenancy of the Property between the Parties, with an entry date of 3 February 2023 at a monthly rent of £340.00;
 - ii) The Applicant paid a tenancy deposit of £250.00 by bank transfer to the Respondent on 26 January 2023;
 - iii) Mr. Mark Fortune is a principal of the Respondent;
 - iv) Mr. Fortune corresponded with the Applicant on behalf of the Respondent in an aggressive and threatening manner, placing the Applicant in a fearful state and causing him to abandon the tenancy;
 - v) The Applicant requested return of the deposit;
 - vi) The Respondent has refused to return the deposit;
 - vii) The Respondent did not refund £112.50 to the Applicant.

Decision

29. Having made those findings, the Tribunal determined that a tenancy deposit had been paid, that the tenancy had ended and that no reason had been given for the deposit not to be returned. The Tribunal determined that the Applicant had requested return of the deposit but the Respondent had refused to make payment. The Tribunal determined that the Applicant was entitled to the return of the deposit and so made an Order for Payment in the sum of £250.00.

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.

K Moore

5 March 2024

Legal Member/Chair

Date