



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/23/3563

Re: Property at 49 Westermains Avenue, Kirkintilloch, G66 1EL (“the Property”)

Parties:

Miss Caroline Murphy, 30 Briar Road, Kirkintilloch, G66 3SA (“the Applicant”)

Mrs Martha Gentle, 1/1 Canal Lane, Kirkintilloch, G66 1QL (“the Respondent”)

Tribunal Members:

Mark Thorley (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order that the respondent pay to the applicant the sum of £1,000 should be granted.

Background

1. The applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) by application sent on 8 October 2023. Accompanying the application was a variety of documentation including:

- a) Bank statements for deposit and rent payments
- b) Texts between landlord and applicant
- c) Message from cleaning company
- d) Message between the applicant, her partner and his employer

2. The application was acknowledged by the Tribunal on 10 October 2023. Further information was sought by the Tribunal regarding this and an associated application.

3. The Tribunal accepted that by email of 23 October 2023 that information had been provided which would allow the case to be then assessed for its suitability. Again further information was sought on 26 October 2023.
4. On 7 November 2023 the application was accepted for determination.
5. The application was sent out to the respondent on 30 November 2023.
6. A case management hearing took place on 29 January 2024 and a hearing was then assigned for 7 May 2024.

The Hearing

1. At the hearing the applicant attended along with her partner Mr Roy. Mr Gentle appeared on behalf of the respondent.
2. Both parties had provided supplementary information following upon the case management discussion.
3. The applicant set out the position in relation to the deposit. She indicated that the deposit had not been returned to her. The deposit of £1,000 had been paid by the applicant on or about 16 September 2022. The Tenancy Agreement had been signed on 16 September 2022.
4. The applicant had moved into the property with her partner and two children.
5. At the conclusion of the tenancy the application had been assured by Mr Gentle that the deposit was secure.
6. At the conclusion of the tenancy the applicant had instructed a cleaning agency to clean the property. Only one cleaner arrived rather than two.
7. The applicant and her partner had borrowed money for another deposit from her partner's employer.

Findings in Fact

1. The parties entered into a contract of lease in respect of the property at 49 Westermains Avenue, Kirkintilloch in a Contract Agreement signed and dated 16 September 2022.
2. The commencement date of the tenancy was 1 October 2022.
3. The applicant, in accordance with the Lease Agreement, paid a deposit of £1,000.
4. The tenancy ended on or around 30 September 2023.

5. The deposit has not been returned.
6. The applicant and her partner borrowed money for a further deposit.
7. The applicant employed a cleaning company to clean the property.

Reasons for decision

1. It was entirely accepted by Mr Gentle that a deposit had been paid. The contract between the parties set that out. The lease was to begin on 1 October 2022. The keys of the properties may have been handed over prior to that but that was the lease start date in accordance with the written documentation.
2. There was reference to a deposit. In messages sent the respondent had acknowledged it was a deposit.
3. The deposit had not been returned. The suggestion was that there had been “damage” caused. However this was not an application by the respondent. This was an application by the applicant.
4. No reason existed not to return the deposit.
5. There were other heads of claim. The applicant was claiming in part for an extra fee paid to the cleaning company. She had instructed the cleaning company. The fact she paid an additional sum did not bear on the tenancy. That was a matter for her.
6. In addition she was making a claim in respect of the further borrowing that had to be made for the further deposit. However even if this deposit had been secured there was no guarantee as to what (if any) would have been paid out of the deposit. Accordingly the Tribunal did not accept that head of claim.
7. The claim was also a claim in respect of the time taken for the Tribunal but she of course was a party to the application itself and was not entitled to anything from there.
8. Accordingly the Tribunal awarded her the sum of £1,000 being the deposit paid in respect of the property.

Decision

To order that the respondent pay to the applicant the sum of £1,000.

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.



 M.Thorley
 Legal Member Date

7 May 2024