



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/23/3766

Re: Property at Causeway Foot, Hawick, TD9 9TF (“the Property”)

Parties:

Mrs Pauline Rae-Howard, Causeway Foot, Hawick, TD9 9TF (“the Applicant”)

Mrs Dawn Connachan/ Kilpatrick, 11 Forrest Road, Bonchester Bridge, Hawick, TD9 8JS (“the Respondent”)

Tribunal Members:

Mark Thorley (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment by the Respondent to the Applicant in the sum of £900 be made.

- Background

The Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) by application dated 26 October 2023. The application was acknowledged by the Tribunal on 26 October 2023 and accepted for determination on 15 November 2023. The application proceeded under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

A Case Management Hearing was held on 6 February 2024.

A Full Hearing took place on 9 May 2024.

Subsequent to the Case Management Hearing, further representations had been received.

- The Hearing

At the hearing, the Applicant attended. The Respondent was represented by a Mr Robertson from Bannerman Burke.

The Applicant gave evidence alongside her husband and daughter. The Respondent led evidence along with Mr Elliot, surveyor, and Mr Connolly the owner of the business, Mr David Connachan, and Mr David Lister, a former employee.

- Findings in Fact

The Applicant entered into a lease agreement with the Respondent for the rental of the property at Causeway Foot, Hawick, TD9 9TF.

A deposit was paid by the Applicant in the sum of £600, said deposit being paid on 1 September 2022.

Rental payments were made in the sum of £600 from 23 September 2022 until the conclusion of the tenancy.

The money was placed in the Safe Deposit Scheme on 21 December 2023 following upon the conclusion of the tenancy.

The property was not a tied property in terms of employment.

- Reasons for Decision

The issue before the Tribunal was whether the property was a tied cottage, tied into employment and, as such, did not fall under tenancy regulations such that a deposit required to be placed within a rent deposit scheme. The Respondent's submission was that the property was occupied by the Applicant pursuant to her employment with the Respondent. The employee was the Applicant's daughter.

The Applicant paid over the deposit on 1 September 2022. There is no dispute about that. There was also no dispute that the tenancy had come to an end on 6 February 2024.

Rent was due to be paid in the sum of £600 per month.

The Applicant indicated that she was always going to be the tenant of the property. There was a meeting with the Respondent's husband. This was in advance of the property being taken on. The Applicant acknowledged that her daughter worked for the Respondent, but this was not a property that came with the job. She did not require to live in the property to work for the Respondent. There was in fact no tenancy agreement.

A notice to leave had been served upon all parties.

This was a four bedroom property.

The Respondent argued that the rent on the property was less than it should have been. It should have been £1,000 per month but was being paid at £600 per month. Hence, it was less in value. The Applicant did not know what the rental should have been but would not have paid £1,000 in any event for the property.

Evidence was also given by a former employee of the Respondent that he had lived there but he had a written contract of employment.

The Tribunal accepted the evidence of the Applicant. Indeed, the submission made by the Respondent's agent was to the effect that if the Tribunal viewed this as not being a tied cottage, to limit any payment to the Applicant.

There was no employment contract here with the Applicant's daughter which would in any way suggest this was a tied property. The Tribunal accepted entirely the evidence given by the Applicant and others on her behalf that she rented the property. She did rent it for potentially a lower market value but that did not mean it was a tied cottage.

On the basis that the defence to the action was one of "a tied cottage" and the Tribunal, having rejected that argument, they then moved onto the issue of financial compensation.

It was said by the agent for the Respondent that this was not a deliberate flouting of the rules. It was a mistake. She rented no other properties.

The Tribunal took the view that this is a matter that could have resolved at a much earlier stage. The deposit had still obviously not been returned as yet to the Applicant.

In the circumstances, the Tribunal took the view that an award of £900 should be made represented 1.5 times the rental figure.

- Decision

To make an order for payment by the Respondent to the Applicant in the sum of £900.

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.

Mark Thorley

9th May

Legal Member/Chair

Date