



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/24/1563

Re: Property at 7F ROXBURGH WAY, GREENOCK, PA15 4LN (“the Property”)

Parties:

MISS HEATHER BURNSIDE, 63 BOW ROAD, GREENOCK, INVERCLYDE, PA16 7DY (“the Applicant”)

MRS HAYLEY SLATER, 65 KILLOCHEND DRIVE, GREENOCK, PA15 4EW (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an order for payment against the Respondent in favour of the Applicants in the sum of £375.

Background

1. The Applicant submitted an application under Rule 111 for an order for payment on the basis that the Applicant’s deposit had not been returned to her.
2. By decision dated 7 May 2024, a Convenor of the Housing and Property Chamber having delegated power for the purpose, referred the application under Rule 9 of the Rules to a case management discussion (“CMD”).
3. The Tribunal issued letters on 17 June 2024 informing both parties that a case CMD had been assigned for 26 July 2024 at 10am, which was to take place by conference call. In that letter, the parties were also told that they were required to take part in the discussion and were informed that the Tribunal could make a decision today on the application if the Tribunal has sufficient information and

considers the procedure to have been fair. The Respondent was invited to make written representations by 8 July 2024.

4. The Tribunal received an email from the Respondent on 5, 10 and 18 July 2024, setting out her position. The Respondent lodged an application for a time to pay direction, to be considered in the event of an order being granted.

The case management discussion

5. The Applicant was represented by Mr Ben Stevenson and the Respondent represented herself. The CMD which took place by conference call. This case called alongside a related case which proceeds under chamber reference FTS/HPC/PR/24/1505. The Tribunal explained the purpose of the CMD and then noted that a number of matters were not in dispute, namely:
 - a) The tenancy started on 16 December 2019;
 - b) The tenancy ended on 16 January 2024;
 - c) The Applicant paid a deposit of £375 to the Respondent at the outset of the tenancy;
 - d) The deposit has not been repaid to the Applicant.
6. The Respondent explained that she has incurred costs in effecting repairs at the Property following the Applicant's departure. The Respondent has made a claim for payment against the Applicant which exceeds the value of the deposit but that has not yet been determined by the Tribunal.
7. The Applicant's representative moved for an order for payment in respect of the deposit.
8. The Tribunal noted that there was no material factual dispute between the parties. A Hearing was not required to determine the present application.
9. The Tribunal discussed the Respondent's application for a time to pay direction. The income disclosed on the application does not include rental income and the Respondent did not wish that disclosed to the Applicant. It was noted that the Applicant's expenditure far exceeds her income.

Findings in Fact

10. The parties entered into a private residential tenancy which commenced 16 December 2019.
11. The Applicant paid a deposit of £375 to the Respondent at the outset of the tenancy.
12. The Respondent retained the deposit and did not repay that to the Applicant.

Reason for Decision

13. The Tribunal proceeded on the basis of the written documents which were before it and the information provided by the parties at the CMD. The Respondent accepted that she retained the Applicant's deposit. She explained that she had incurred costs which exceed the value of the deposit. The Respondent has made a separate application to the Tribunal in respect of the costs of repairing the Property. There was insufficient material before the Tribunal today in respect of the costs incurred by the Respondent for the Tribunal to make any determination about that. The Tribunal noted that since the deposit was not protected by the Respondent, the parties did not have the opportunity to have any dispute adjudicated upon by an approved scheme. The Tribunal decided that the deposit should be returned to the Applicant.
14. In relation to the Respondent's application for a time to pay direction, the statement of income and expenditure disclosed did not include all of the Respondent's income. On the face of it, the Respondent cannot afford to pay instalments of £100 per month and the Tribunal therefore refused the application for a time to pay direction.

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.

Nicola Irvine

Legal Member/Chair

26 July 2024

Date