



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/23/3405

Re: Property at 4 Boase Avenue, St Andrews, KY16 8BX (“the Property”)

Parties:

Ms Zahra Chard, 43 Kinnessburn Road, St Andrews, KY16 8AD (“the Applicant”)

Mr James MacAulay, 1 Saxe Coburg Place, Edinburgh, EH3 5BR (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Applicant)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it would dismiss the principal application; and continue consideration of the respondent’s motion for expenses.

BACKGROUND

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 111 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for repayment of tenancy deposit.

First Case Management Hearing on 19 March 2024

2. Notice of the case management discussion which was to take place on 19 March 2024, had been sent to the parties.
3. The application called for a case management hearing on 19 March 2024 at 11am.
4. The respondent appeared with his solicitor, Mr McMurtrie. The applicant did not appear.
5. The respondent asked that the case be dismissed. The tribunal considered whether to dismiss the application given the applicant failed to appear. The case management discussion had been moved from 10am to 11am with notification of this being sent to parties by email on 18 March. The applicant's representative was calling in from the USA. There had been no contact from the applicant to advise they could not attend. The respondent invited me to dismiss the case, given the applicant had not appeared and they had had sufficient notice of the date of this hearing, and the change to the time had only been to delay it for one hour.
6. The tribunal considered on this occasion it would refuse the respondent's motion and continue the case to a further case management hearing. The reasons being: that it had been the legal member who had sought to change the time of the case management hearing at short notice. The applicant would be able to re-raise the proceedings and there would be an extra cost to the public purse if they were re-raised, rather than continuing the application to a further date to see if the applicant appears. The tribunal considered it accorded with the overarching principles to continue the application to another hearing. If the applicant did not appear on that occasion, then the respondent could renew his motion.

7. The tribunal sought to clarify a preliminary matter with the respondent, and this was in relation to his position that the deposit had been used to pay the final month's rent at the request of the applicant.
8. The tribunal noted that the respondent advises that he was requested to use the deposit monies to pay for the final month's rent. He advises that the applicant's father then paid the final month's rent for the applicant. The respondent advises that he returned the payment of the final month's rent to the applicant's father after the tenancy ended. The tribunal requests that parties provide relevant documentary evidence in relation to these matters. It will assist the tribunal to determine the matter. The tribunal will issue a direction dealing with the matter.
9. The tribunal issued a direction on 19 March 2024 and adjourned the case management discussion to a further date.

Direction

10. The Direction of 19 March 2024 requested that parties address the following: -

The Applicant is asked to confirm whether or not she wishes to continue with her application or does she wish to withdraw it.

*The Applicant/Respondent is required to provide: Any relevant documentary evidence held showing payment of rent for the property; and repaid of rent or deposit monies to the applicant or her father. The said documentation should be lodged with the Chamber no later than close of business on **30 April 2024**.*

Reason for Direction

- a. *The respondent advises that he was requested to use the deposit*

monies to pay for the final month's rent. He advises that the applicant's father then paid the final month's rent for the applicant. The respondent advises that he returned the payment of the final month's rent to the applicant's father after the tenancy ended.

b. The tribunal requests that parties provide relevant documentary evidence to allow the matter to be determined.

11. There was no response to the direction from the applicant.

12. The respondent replied to the terms of the direction and lodged documents supporting his position that the tenancy deposit had been repaid to the applicant on 5 October 2024.

13. A second case management discussion was fixed for 25 June 2024 at 10am.

14. The applicant's representative sent an email to the tribunal on 29 May 2024 advising that he stayed in Boston in the US. "We are 5 hours behind the UK, 10.00 am UK time is 5.00 am US time. I will not be joining a call at 5.00 am. Please can you arrange for the time to be changed?" In view of this request, the tribunal moved the time of the case management hearing to 11.30 am to accommodate the applicant. Parties were notified of this time change.

DISCUSSION ON 25 JUNE 2024

15. The respondent and his agent appeared on 25 June 2024.

16. There was no appearance by the applicant.

17. The respondent's agent moved that I should dismiss the application given that this was the second time that the applicant had failed to appear. He also submitted that the respondent had supplied the information requested in the

direction. He noted that it showed that deposit had been returned on 5 October 2023 and therefore there had been no good reason to continue with this case when it had been received by the applicant.

18. The agent for the respondent also moved for expenses given the time and expense that the respondent had been put to by the applicant for no good reason.

REASONS FOR DECISION

19. In terms of Rule 27 of the Tribunal Rules 2017 as the applicant did not appear for the second time, I decided to dismiss the Applicant's application.

20. In terms of the motion for expenses, this is the second time that this case has called for a case management discussion even though the papers lodged by the respondent show that the deposit was repaid to the applicant on 5 October 2023.

21. The application was made on 25 September 2023.

22. The case was accepted on 16 October 2023 and the applicant was notified of this on 19 October 2023.

23. The parties were advised on 20 November 2023 that a case management discussion would take place on 16 January 2024. The case was however postponed as the respondent could not attend on that date; he had advised the tribunal of his inability to attend.

24. In February the respondent asked that the proceedings be dismissed as he had been called as a respondent in identical other proceedings. It appears that these were in fact proceedings under rule 103 failure to lodge a tenancy deposit, so they were not identical but related to the same matter.

25. The parties were then advised that a case management decision would take place on 19 March 2024.
26. At the case management discussion on 19 March 2024 there was no appearance by the applicant. The respondent appeared with his agent.
27. A direction was issued after the case management discussion which asked the applicant to confirm if they were proceeding with the case. There was no response from the applicant to the direction.
28. The respondent complied with the direction on 28 March 2024, this included evidence that he had repaid the deposit. These papers were sent to the applicant on 28 March 2024.
29. Notification of the second case management discussion which was to take place on 25 June 2024 was given on 29 May 2024.
30. On 29 May 2024 the applicant's representative emailed the tribunal office requesting that the time be changed for the case management discussion.
31. The tribunal re-arranged the time of the hearing on 25 June 2024 to 11.30am and provided notice of this time change.
32. There was no appearance by the applicant at the case management discussion on 25 June 2024. Neither the applicant nor her representative contacted the tribunal office to advise that they would not be attending on this date.
33. Neither the applicant nor her representative have advised the tribunal at any time since 5 October 2023 that that the applicant was not proceeding with the application as the deposit had been repaid.
34. Rule 40 of the tribunal rules deals with expenses and says that the first-tier tribunal may award expenses as taxed by the auditor of the Court of Session against a party but only where that party through unreasonable behaviour in the

conduct of a case had put the other party to unnecessary expense or unreasonable expense. The purpose of expenses is to cover any unnecessary or unreasonable expense incurred by the party in whose favour the order for expense is made.

35. The respondent seeks expenses for the unnecessary or unreasonable expense he has been put to due to the unreasonable behaviour in the conduct of the case by the applicant.

36. I am prepared to consider the respondent's motion for expenses to be awarded in his favour. Before proceeding to determine the question of expenses I shall provide both parties with an opportunity to submit written representations whether an award of expenses should be made.

DECISION

37. Application dismissed.

38. Application for an award of expenses continued and Direction issued

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. Barbour

Legal Member/Chair

Date 2nd July 2024

