



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/24/1154

Re: Property at 21 Dunnikier Way, Edinburgh, EH17 8HJ (“the Property”)

Parties:

Mr Tai Chu Ko, Ms Wai Ying Cecilia Lai, Flat 2, 79 Ocean Drive, Edinburgh, EH6 6BP; Flat 2, 79 Ocean Drive, Edinburgh, EH6 6BP (“the Applicant”)

Mr Arunangshu Mukherjee, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Mary-Claire Kelly (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for payment in the sum of EIGHT THOUSAND FIVE HUNDRED AND SEVENTY POUNDS AND EIGHTY-SEVEN PENCE (£8570.87)

Background

1. By application dated 10 March 2024 the applicants seek and order for payment. The amount sought comprises £3,053.01 in respect of outstanding advance payment of rent, storage facility costs of £4317.86 incurred due to the respondent’s breach of tenancy agreement and solicitor’s fees of £1200 incurred in the process of seeking to recover the prepaid rent.
2. The following documents were lodged with the application:
 - Property rental advertisements
 - Tenancy Agreement
 - Invoices for storage space from April 2023 to March 2024

- Invoices from MBM solicitors

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3. The applicants were in attendance. A Cantonese interpreter was also present. The respondent was not present or represented. The Tribunal noted that the applicants had asked the respondent's letting agents, Zone Letting for details of the respondent's current address and had been advised that the respondent was not prepared to release that information. Service had been attempted on a second property thought to be owned by the respondent without success. Service had been by advertisement in terms of rule 6A. The Tribunal was satisfied that rule 24.1 had been complied with and proceeded with the application in the respondent's absence.
4. The applicants explained that they had entered into a lease agreement with a commencement date of 15 February 2023. The property was a four-bedroom detached house with a spacious garage. The applicants had chosen the property specifically because it had sufficient storage capacity in the garage. The monthly rent due was £2550. The applicants explained that they had arrived in Scotland from Hong Kong in January 2023. As they were relocating permanently to Scotland, they had arranged for a large amount of personal possessions to be shipped to Scotland. This was the reason that storage was a primary concern.
5. The respondents were keen to obtain the property and had paid six months rent in advance, totalling £15,300. The respondents had expected the property to be ready to move into and in particular had expected that the garage would be empty and ready to use.
6. When the respondents took possession of the keys on 15 February 2023 there were personal possessions in the property including the garage. As a result, the applicants were unable to use the garage for storage. The applicants did not move into the property. The applicants had sought to resolve the issue with the letting agents however the landlord was not prepared to have the items removed. As a result, the applicants terminated the tenancy.
7. MBM solicitors gave formal notice to the letting agents that the applicants were terminating the tenancy on 21 March 2023.

8. The applicants sought legal representation from MBM solicitors to recover the rent which had been paid in advance. They also raised an application under ref FTS/HPC/LA/23/1131 alleging a breach of the Letting Agent Code of Practice. A Letting Agent Enforcement Order was issued against the respondents at the conclusion of that application.
9. The respondent returned £12,246.99 to the applicant, which left an outstanding amount of £3053.01.
10. The applicants produced invoices from MBM solicitors in the amount of £1200 incurred as a result of the breach of tenancy agreement by the respondent.
11. The applicants explained that as they were unable to move into the property, they rented an alternative property for a period. As properties with garages were difficult to find for rent in Edinburgh, they had no alternative but to pay for storage in a storage facility. The applicants advised that they continued to require the storage facility until they purchased their own property with sufficient storage in April 2024.
12. The figure of £4317.86 was the amount the applicants paid for storage of their property from April 2023 until March 2024 when the application was submitted. Invoices vouching for the payments had been produced.

Findings in Fact

13. Parties entered in a lease agreement with a commencement date of 15 February 2023.
14. A key consideration in the applicants entering into the lease agreement was that the property had a garage suitable for storage of the applicants' possessions.
15. When the lease commenced the respondents had not removed their personal possessions from the property and the applicants were unable to use the property for storage.
16. The applications requested that the items be removed from the garage however the respondent refused to do so.
17. The respondent breached the tenancy agreement as he failed to provide possession to the applicants at the agreed date of entry.
18. The respondent failed to return rent paid in advance in the sum of £3051.03.

19. As a result of the respondent's breach of contract and subsequent failure to return unpaid rent the applicants incurred legal costs in the sum of £1200.
20. As a result of the respondent's breach of the tenancy agreement the respondents incurred storage costs in the sum of £4317.86

Reasons for Decision

21. The Tribunal took into account the written representations, invoices and other documents lodged by the applicants. The Tribunal also had regard to the decision of the First-tier Tribunal under reference: FTS/HPC/LA/23/1131.
22. The Tribunal was satisfied that the respondent had breached the tenancy agreement by failing to provide possession and in particular by failing to remove items from the garage to allow the applicants to use the garage to store the possessions they had brought with them from Hong Kong. The items the respondent had left in the garage could not be said to fall within what would normally be acceptable in a furnished let.
23. As a result of the respondent's failure to provide possession there had been a material breach of contract, allowing the applicants to rescind from the contract.
24. The applicants incurred financial losses as a result of the material breach of contract. In particular the respondent failed to return prepaid rent, they incurred legal costs seeking to recover the prepaid rent and they incurred additional costs of securing storage for their personal possessions until they had secured an alternative property with sufficient storage.
25. The Tribunal found the applicants' to be credible and straightforward in their evidence and had no reason to disbelieve their evidence.
26. The Tribunal gave weight to the fact that the respondent had not taken any steps to defend the application.

Decision

The Tribunal determined to grant an order for payment in the sum of EIGHT THOUSAND FIVE HUNDRED AND SEVENTY POUNDS AND EIGHTY-SEVEN PENCE (£8570.87)

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.

Mary-Claire Kelly

Legal Member/Chair

2 September 2024

Date