



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

**Chamber Ref: FTS/HPC/CV/23/4656**

**Re: Property at 6 (PF1) Buccleuch Terrace, Edinburgh, EH8 9ND (“the Property”)**

**Parties:**

**Miss Sarah Newton, 342/10 Morningside Road, Edinburgh, EH10 4QL (“the Applicant”)**

**Mr Sammy Al-Azzawi, 6 (PF1) Buccleuch Terrace, Edinburgh, EH8 9ND (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Gerard Darroch (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment against the Respondent in the sum of Five hundred pounds (£500) Sterling**

**Background**

- 1 The Applicant applied to the Tribunal seeking an order for payment against the Respondent in respect of her tenancy deposit under Rule 111 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”). In summary the Applicant submitted that she had paid a deposit of £500 to the Respondent and he had failed to repay this at the end of the tenancy.
- 2 By Notice of Acceptance of Application a Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. The application was therefore referred to a Case Management Discussion (“CMD”) to take place by teleconference on 27<sup>th</sup> March 2024 at 2pm. Both parties were written to with the date of the CMD

in accordance with Rule 17(2) of the Rules. The Tribunal also requested all written representations be submitted by 5<sup>th</sup> March 2024.

- 3 On 16<sup>th</sup> February 2024 sheriff officers served the letter with notification of the CMD date and application paperwork upon the Respondent.
- 4 On 16<sup>th</sup> March 2024 the Respondent emailed the Tribunal with written representations. In summary he stated that he was a “live-in landlord” who had resided in the property with the Applicant and another tenant. He denied taking a deposit from the Applicant or the joint tenant, claiming that the payment was in respect of a rent extension. The Respondent explained that he was not in the property when the Applicant was in the process of vacating as he had a family emergency at the time. The Applicant had been aggressive on the phone and he had “obliged her” to ensure she left the property quietly, and to prevent the situation from escalating. He had been surprised by the application and had attempted to reach out to the Applicant to discuss, but had received no response. The Respondent submitted an excerpt from an undated utility bill as proof of his residence at the property.

### **The CMD**

- 5 The CMD was held on 27<sup>th</sup> March 2024 at 2pm by teleconference. The Applicant was present and represented herself. The Respondent was present and represented himself.
- 6 The Respondent disputed the claim entirely. He said that he did not rent out the property as a private residential tenancy (“PRT”) and he did not take a deposit. As there was no deposit taken, he had not broken the regulations about lodging any deposit within an appropriate scheme. He said that it was a two bedroomed property. He told the Tribunal that he lived in one of the bedrooms and the Applicant and the other tenant lived in the other room together. He did not take a deposit from the Applicant as it was not a PRT. He said that he had three properties in total. This property, one that was lived in by his mother and one that was rented out as a PRT. He said that he was a registered landlord for that property. The property that he rented out as a PRT was at a different address. He had rented it out for 3-4 years and did not take a deposit for that property.
- 7 The Applicant disputed the Respondent’s account. The Respondent was not living in the Property. She also told the Tribunal that her relationship with the other tenant was as flatmates. She rented one room and the other tenant had rented the other room.
- 8 The Tribunal decided, as matters were in dispute, that the case must proceed to a full hearing. Parties were advised that they could seek further advice from a solicitor or appropriate advice agency should they wish assistance with the preparation of their position or representation at the hearing.

9 The Respondent asked if witnesses would be able to attend the hearing. The Tribunal confirmed that they would. He objected to this as he felt that the Applicant would bring her friends to support her position and that they would do that because they were her friends. The Tribunal noted that he could bring any witness that he felt would support his position. He said that he would not do that but thought that the Respondent should not be allowed to do that either. The Tribunal explained that it was a long set principal within the judicial system that parties can have witnesses to give oral evidence. This was a judicial process. It would be up to the Tribunal to make a decision based on the balance of probabilities whether it considered the position argued by one side or the other to be the most probably right one. The Tribunal would consider the evidence as a whole. It would be up to the Applicant and the Respondent to evidence their position. The Respondent expressed some concerns about his ability to obtain evidence. He had not been registered to pay council tax at the property, which belonged to his brother. His brother was paying the council tax before the Applicant moved in. The Respondent was not registered with a doctor or dentist. The Respondent did not think that he had any further evidence

10 The application was therefore continued to a hearing and a Direction was issued to parties. The Direction required the Applicant to provide written submissions on the following questions in advance of the hearing:-

*“1. What evidence is there to support that the Respondent did not live in the Property? What evidence is there that the Respondent was the landlord?”*

*2. What further evidence is there that the Respondent took a deposit?*

*3. Was the electrical usage such is as typical for two people? What evidence is there of this?*

*4. What evidence is there that the Respondent was not living in this Property? Did he give a correspondence address for him that was different from this one?”*

11 The Direction further required the Respondent to provide written submissions on the following questions in advance of the hearing:-

*“1. Was the electrical usage such is as typical for two people? What evidence is there of this?”*

*2. Proof of the Respondent’s landlord registration, what property that relates to and what address the Respondent himself is registered as living at for the landlord register;*

3. Evidence of where the Respondent has been paying council tax since the start of when the Applicant living in the Property;

4. Redacted payslips for the Respondent the period that the Applicant has lived in the Property showing where his employer considers that he lives. Failing which a redacted tax return if he is self employed or benefits letters if the Respondent is claiming benefits;

5. Redacted bank statements for the Respondent for the period that the Applicant lived in the property showing what address the Respondent's bank is has him registered at;

6. What is the Respondent's given name as per his birth certificate? A copy of the Respondent's birth certificate should be lodged

7. An explanation why in the texts lodged by the Applicant why he has said that he would return £500 to the Applicant once she paid the last months rent. This should be in the form of a written submission;

8. Evidence that only the Respondent's mother and her household lived at her address for council tax purposes during the period that the Applicant was in this property. This should be in the form of council tax bills for that period redacting any personal details that are not to be shared with the Tribunal;

9. A copy of the Respondent's drivers licence showing the address that the DVLA have him registered as living at. If there has been a change of address this should be produced along with any letter sent by the DVLA confirming the date that the driver's licence had the address changed. A copy of any insurance for any vehicle that the Respondent drives. This can be redacted but must show the address that the Respondent has insured his vehicle at.

10. Why was the council tax changed to be put in the names of the Applicant and the other person in the Property? Why did he not add his name to it when he purports to be living there? When was the Respondent last listed as paying council tax at this Property?"

- 12 The Direction required both parties to provide their written submissions no later than fourteen days prior to the hearing, together with a list of witnesses, all legal authorities they were relying upon, and all documents they were relying upon. The hearing was scheduled for 26<sup>th</sup> August 2024.
- 13 On 23 July 2024 the Applicant submitted written submissions in response to the Direction together with additional documents that she wished to rely upon.
- 14 No response to the Direction was received from the Respondent.

## **The Hearing**

- 15 The first hearing took place on 26<sup>th</sup> August 2024. The Applicant was in attendance, with her three witnesses on standby. The Respondent did not participate. The hearing was adjourned as the original Legal Member was unable to conduct the hearing that day.
- 16 The second hearing took place on 12<sup>th</sup> November 2024. The Applicant was again in attendance, with her three witnesses on standby. The Respondent did not participate. The Tribunal noted that he had received notification of the hearing on 14<sup>th</sup> October 2024 in accordance with Rule 24(1) of the Rules. The Tribunal further noted that he had not been present at the previous hearing, and had not provided any response to the Tribunal's Direction. The Tribunal therefore determined it could proceed in his absence.
- 17 The Tribunal proceeded to hear evidence from the Applicant and her three witnesses. For the avoidance of doubt the following is a summary of the evidence and does not constitute a verbatim account of the proceedings.

## **The Applicant**

- 18 The Applicant explained that she had met the Respondent in August 2022. Her friend Lily Martin had introduced them as she knew that the Applicant and her friend Grace McDonald were looking for a place to stay. The Respondent had said that he could offer them a property. The Applicant referred to screenshots of Whatsapp messages that she had submitted in support of this. The Respondent had then met with the Applicant and Miss McDonald on 1 September 2022 to sign the lease. The Respondent had not provided the Applicant, nor Miss McDonald, with a full copy of the lease, only the front and back page. The document the Applicant had seen appeared to pertain to a holiday let. The Applicant accepted that there was no mention of a deposit in the document produced, however explained that the Respondent had advised the Applicant and Miss McDonald when the lease was signed that he would require a deposit of £500 before he could give them the keys for the property. The Applicant had then attended a cash point to withdraw the money on behalf of herself and Miss McDonald. She referred to a bank statement submitted with the application as evidence of this.
- 19 The Applicant explained that she had subsequently contacted the Respondent to give notice to leave the property. She had asked about the deposit. The Respondent advised that he would return this. The Applicant referred to screenshots of Whatsapp messages in support of this. However the Respondent had not done so.
- 20 The Applicant advised that she had not received a receipt for the deposit. The Respondent would not provide one. She therefore had to seek clarification from him on the amount that had been paid, referring again to the Whatsapp

messages in support of this. The Respondent and Miss McDonald were US citizens. They were not familiar with the legal requirements in relation to deposits. They did not know the deposit had to be lodged with a scheme until they moved out of the property.

- 21 The Applicant was unaware of the Respondent's position regarding his live-in landlord status until the CMD. At no point during the tenancy had he resided in the property. She referred to a council tax bill, which she had submitted as evidence. Only the Applicant and Miss McDonald were named on the bill. At no point during the tenancy was the Respondent named on any of the council tax bills. He did not pay the council tax for the property nor the utility bills. The Applicant had to apply for a visa extension and required to provide her landlord's address. She had contacted the Respondent to request this. He had stated his address to be 5 Windmill Place, Edinburgh. The Applicant referred to screenshots of this conversation, which had taken place over Whatsapp. The Applicant also referred the Tribunal to a photograph showing her bedroom in the property. The property was a two bedroom, with a kitchen, living room, bathroom and hall. Miss McDonald occupied the other bedroom, not the Respondent, as he had claimed. The Applicant referred to a screenshot of a chain of Whatsapp messages between herself and her friends which referred to a visit from the Respondent to the property. The Respondent would only attend the property to collect the rent, which had to be paid to him in cash.
- 22 The Applicant referred the Tribunal to a screenshot of a Whatsapp message which had been sent to her by the Respondent after the application was submitted to the Tribunal, asking if they could sort things out. The Respondent had also driven past her new home on two occasions to scream at the Applicant. The second incident had taken place the day before the previous Tribunal hearing. The Applicant explained that she and her witnesses had received strange unknown phone calls on a regular basis, at odd times of the day. There was no proof that this was the Respondent but they suspected it was him. The Respondent had also tried to reach out to Miss Martin in the absence of a response from the Applicant. The Applicant explained that she and her witnesses had felt threatened and unsafe. They knew the Respondent had no landlord registration for the property. They wanted to ensure that any future tenants were protected. It was no longer just about the money.
- 23 The Applicant was unclear as to why the Respondent had said the payment of £500 was for a rent extension. The rent was £1650 per month. The Respondent had given no indication of why £500 would be due. The Applicant confirmed that the rent had been paid in full on the 1<sup>st</sup> of each month, with cash left in an envelope on the kitchen table. The rent had been paid up until the end date of the tenancy.

### Grace McDonald

- 24 The Tribunal heard evidence from Miss McDonald, who was a joint tenant under the Applicant's lease. Miss McDonald confirmed that she and the Applicant had paid a tenancy deposit when they moved into the property, in addition to the rent. The Respondent was "*pretty weird*" about the rent, insisting it was always paid in cash and he would pick it up. The Respondent had never lived at the property during the tenancy. It had just been the Applicant and Miss McDonald in the two separate bedrooms. Miss McDonald confirmed that only she and the Applicant were registered for council tax. They paid the council tax and the electricity costs. Miss McDonald was not aware of the Respondent having paid either at any point during the tenancy. She and the Applicant would only see the Respondent when he came to collect the rent. Miss McDonald did not recall getting a receipt for the deposit payment, just the pages from the lease agreement. Miss McDonald confirmed that the Respondent had requested the deposit at the time the lease was signed and the Applicant had obtained this from a cash machine.

### Lily Martin

- 25 The Tribunal heard evidence from Miss Martin, who had introduced the Applicant to the Respondent. Miss Martin confirmed that she had been renting a property from the Respondent for approximately one year at that point. The Applicant needed a property and Miss Martin knew that the Respondent could help. He sent her photos of a two bedroom property. Miss Martin subsequently set up a meeting between the Applicant, Miss McDonald and the Respondent to view it. The property was occupied by Miss McDonald and the Applicant. They each had a bedroom. Miss Martin confirmed that the Applicant had withdrawn cash from a cash machine to pay a deposit to the Respondent. Miss Martin was aware that the Applicant had requested her deposit back when she gave notice to leave the property, but did not hear back from the Respondent.
- 26 Miss Martin confirmed that she had paid a cash deposit when she took up her own tenancy with the Respondent. However the arrangement the Respondent had in place at that time was different. He had told her that the deposit was for the last months rent. When the Applicant and Miss McDonald signed their lease agreement the Respondent had said that he was not doing that anymore as there were issues. Instead the Applicant and Miss McDonald were required to pay the deposit and it would be returned to them at the end of the tenancy. There was no suggestion from the Respondent that the deposit would be lodged in a tenancy deposit scheme. Miss Martin confirmed that she received a receipt when she paid the rent and deposit at the start of her tenancy. She was not sure how many other properties the Respondent rented out.

## Miss Venezia Castro

- 27 Miss Castro confirmed that she was a friend of the Applicant and Miss McDonald. She had been in the property many times. She had never met the Respondent and did not know what he looked like. There would not be space in the property for him as it was only a two bedroom property.

## Closing submissions

- 28 The Applicant confirmed that she sought an order for payment in the sum of £500 as repayment of the tenancy deposit she had paid to the Respondent.

## **Relevant Law**

- 29 The relevant law is contained with the Private Housing (Tenancies) (Scotland) Act 2016:-

### **1 Meaning of private residential tenancy**

*(1) A tenancy is a private residential tenancy where—*

*(a) the tenancy is one under which a property is let to an individual (“the tenant”) as a separate dwelling,*

*(b) the tenant occupies the property (or any part of it) as the tenant's only or principal home, and*

*(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.*

*(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.*

### **71 First-tier Tribunal's jurisdiction**

*(1) In relation to civil proceedings arising from a private residential tenancy—*

*(a) the First-tier Tribunal has whatever competence and jurisdiction a sheriff would have but for paragraph (b),*

*(b) a sheriff does not have competence or jurisdiction.*

*(2) For the purposes of subsection (1), civil proceedings are any proceedings other than—*

*(a) the prosecution of a criminal offence,*

*(b) any proceedings related to such a prosecution*

## **Schedule 1**



## **Resident landlord**

**7** A tenancy cannot be a private residential tenancy if paragraph 8 or 9 applies to it.

**8** This paragraph applies to a tenancy if—

(a) the let property would not be regarded as a separate dwelling were it not for the terms of the tenancy entitling the tenant to use property in common with another person (“shared accommodation”), and

(b) from the time the tenancy was granted, the person (or one of the persons) in common with whom the tenant has a right to use the shared accommodation is a person who—

(i) has the interest of the landlord under the tenancy, and

(ii) has a right to use the shared accommodation in the course of occupying that person's home.

**9** (1) This paragraph applies to a tenancy if sub-paragraphs (2) and (3) apply to it.

(2) This sub-paragraph applies to a tenancy if, from the time it was granted, a dwelling within the same building as the let property has been occupied as the only or principal home of a person who, at the time of occupying it, has the interest of the landlord under the tenancy.

(3) This sub-paragraph applies to a tenancy if, at the time it was granted, there was an ordinary means of access—

(a) through the let property to the dwelling occupied by the person who is, or is to be, the landlord, or

(b) through the dwelling occupied by the person who is, or is to be, the landlord to the let property (whether or not that access was available to the tenant as of right).

(4) For the purpose of this paragraph, in determining whether a dwelling is occupied as the only or principal home of the person having the interest of the landlord, no account is to be taken of—

(a) any period beginning with the date on which the interest of the landlord is transferred (other than on death) and ending—

(i) 28 days later, or

*(ii) 6 months later if, within 28 days of the period beginning, the person to whom the interest is transferred notifies the tenant of the person's intention to occupy a dwelling within the same building as the let property,*

*(b) any period of up to 24 months beginning with the date of the person's death and ending with the person's interest in the tenancy being vested in another person (otherwise than as the person's executor).*

## **Findings in Fact**

- 30 The Applicant entered into a tenancy agreement with the Respondent which commenced on 1 September 2022. The tenancy was a joint tenancy with the Applicant and Grace McDonald.
- 31 The Respondent did not provide the Applicant with a full copy of the tenancy agreement. The agreement described the tenancy as a holiday let. The agreement did not mention payment of a tenancy deposit.
- 32 The Applicant paid the sum of £500 to the Respondent in cash on 1 September 2022.
- 33 The payment of £500 was held by the Respondent as security for the performance of any of the Applicant's obligations arising under the tenancy. The payment of £500 was a tenancy deposit.
- 34 Prior to the termination of the tenancy the Applicant requested repayment of the deposit. The Respondent confirmed he would arrange this.
- 35 The Respondent did not repay the deposit of £500 to the Applicant.
- 36 The tenancy between the parties terminated on 30 September 2023.
- 37 Under the terms of the tenancy agreement, the Applicant and Miss McDonald agreed to make payment of rent at the rate of £1650 per month.
- 38 The rent was paid in full by the Applicant and Grace McDonald up until the termination of the tenancy. The Respondent would only accept rent paid in cash. The Respondent collected said rent on a monthly basis from the property.

- 39 The Respondent did not reside in the property as his only or main home during the Applicant's tenancy. The sole occupants of the property during that period were the Applicant and Grace McDonald.
- 40 Only the Applicant and Grace McDonald were registered for council tax during the term of the tenancy. The Applicant and Grace McDonald paid the council tax and the utility bills.

### **Reasons for Decision**

- 41 The Tribunal determined the application having regard to the application paperwork, the written representations from the parties, the verbal submissions at the Case Management Discussion and the evidence led at the hearing. The Tribunal considered it could make a decision on the application in the absence of the Respondent. He had been given the opportunity to participate in the proceedings but had failed to respond to the Tribunal's Direction, and had failed to attend either hearing.
- 42 The Tribunal did not accept the Respondent's argument that the property was his main home during the term of the Applicant's tenancy. He had provided no evidence, other than an undated energy bill, to prove that this was the case. The Tribunal instead preferred the Applicant's account of the circumstances surrounding the tenancy. She was credible and open in her evidence at the hearing, which was supported by the evidence from the other witnesses and the documents she had submitted. On one occasion the Respondent had confirmed himself in a Whatsapp message that he did not reside at the property by providing a different address. The Tribunal also found it difficult to believe that he would have not have registered himself at the property for council tax purposes, if indeed he was residing there on a full time basis. Instead, the Tribunal found it more credible that the Respondent had let a two bedroom property to two students, both of whom occupied separate bedrooms.
- 43 The Tribunal therefore concluded that paragraphs 8 and 9 of Schedule 1 of the 2016 Act did not apply to the tenancy between the parties. The tenancy was therefore a private residential tenancy and the Tribunal had jurisdiction to consider the matter under section 71 of the 2016 Act.
- 44 The Tribunal accepted that the Applicant had paid a tenancy deposit of £500 to the Respondent in cash at the commencement of the tenancy. Whilst there was no mention of this in the tenancy agreement, the Applicant's position was supported by the excerpts from her bank statement and the Whatsapp messages from the Respondent at the end of the tenancy confirming that he would arrange for this to be repaid. Based on the Applicant's account of the Respondent's conduct during the tenancy, the Tribunal found it believable that

he would neglect to include reference to the tenancy deposit in the lease agreement.

- 45 The Tribunal did not believe that the payment of £500 was retained for a rent extension. The Respondent had provided no evidence of this, and had not specified the rental period to which this would have been applied. The rent was £1650 per month. The Applicant paid the sum of £500. The Tribunal found it difficult to understand how the sum of £500 could be applied to the rent payable. The Tribunal instead accepted that the payment of £500 had been held by the Respondent as security for the performance of the Applicant's tenancy obligations and was therefore a tenancy deposit. This was supported by the Whatsapp messages produced by the Applicant in which the Respondent had given a commitment that he would repay her the £500.
- 46 The Tribunal therefore concluded that the Applicant was entitled to the return of her deposit in full. The Respondent had provided no evidence that any deductions from the deposit were justified in this case and the Tribunal accordingly made any order for payment against the Respondent in the sum of £500.

### **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.**

# Ruth O'Hare

**12 November 2024**

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**Legal Member/Chair**

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**Date**