



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/24/2244

Re: Property at 26/1 Leven Street, Edinburgh, EH3 9LJ (“the Property”)

Parties:

Mr Findlay McLean, Mr Callum Findlay, 2 Horne Terrace, Edinburgh, EH11 1JW (“the Applicant”)

Mr Hoai Anh Le, 16 Grange Loan, Edinburgh, EH9 2NR (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicants are entitled to an order for payment for £1100 (ONE THOUSAND ONE HUNDRED POUNDS)

Background

1. An application was received by the Housing and Property Chamber dated 10th May 2024. The application was submitted under Rule 111 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on the Respondent not returning the Applicants deposit of £1100.
2. On 11th October 2024 all parties were written to with the date for the Case Management Discussion (“CMD”) of 18th November 2024 at 2pm by teleconferencing. The letter also requested all written representations be submitted by 1st November 2024.
3. On 14th October 2024, sheriff officers served the letter with notice of the CMD date and documentation upon the Respondent. This was evidenced by Certificate of Intimation dated 14th October 2024.

The Case Management Discussion

4. A CMD was held 18th November 2024 at 2pm by teleconferencing. The First Named Applicant was present and represented both Applicants. The Respondent was not present and not represented. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondents did not make representations in advance of the CMD.
5. Mr McLean said that the Applicants deposit had been lodged with one of the approved deposit schemes. The Applicants were in the tenancy from 1st July 2023 to 10th March 2024. At the end of the tenancy the Applicants asked for their deposit back. The Respondent refused and made a claim with the deposit scheme. The Applicants elected not to oppose this but to pursue the return of the deposit through the First-tier Tribunal. They were told by the deposit scheme that they could do that. They had an experience before where they had contested a deposit but ended up at the First-tier Tribunal anyway. As a consequence of not raising this with the deposit scheme, the deposit was given in full to the Respondent.
6. Mr McLean said that there were no rent arrears relating to the Property. They had not paid the last 10 days rent as they had no water causing the Applicants to have no access to the shower. The Respondent claimed that £403 was due from the deposit for this payment. Mr McLean said that the Respondent had charged £120 for end of tenancy cleaning costs. Mr McLean said that the Applicants were told by the Respondent that if they required a copy of the invoice then this would mean the cleaning costs would be £250 - £300. Mr McLean said that they had cleaned the Property and removed all the items except those which had been in the Property at the start of the tenancy. He considers that the Property was left in a better state than when they took possession of the Property. Mr McLean said that the Respondent has also claimed that there was £400 due from the deposit for matters relating to the boiler. Mr McLean did not know why the Applicants were deemed responsible for any issues arising from the boiler.
7. The Tribunal noted that taking these figures at their highest points that this would total £1023 which is not the amount of the deposit. The Tribunal was not satisfied that the deposit scheme had been able to take all points into consideration given that the Applicants had not made any representations. As a consequence the deposit was returned to the Respondent when the decision may have been different had the deposit scheme been aware of the information which was before the Tribunal. The Tribunal was satisfied that there was insufficient evidence to support that the deposits should have been returned to the Respondent. The Tribunal granted an order for £1100 for the return of the deposit to the Applicants.
8. The Tribunal was satisfied that the outstanding amount for £1100 was due to the Applicants by the Respondent and that it was appropriate to grant an order accordingly.

Findings and reason for decision

9. A Private Rented Tenancy Agreement commenced from 1st July 2023 to 10th March 2024.
10. The Applicants paid the Respondent a deposit of £1100.
11. The Respondent claimed the return of the deposit from the deposit scheme. It was returned to the Respondent. The Applicants did not challenge this as they preferred to take any challenge to the First-tier Tribunal.
12. The Respondent claimed the return of the deposit from the deposit scheme.
13. The Tribunal was not satisfied that the principal of betterment was considered. The Respondent had not lodged evidence to support why the deposit was required. There did not appear to be consideration of wear and tear.
14. The Applicants dispute that any costs were incurred by the Respondent. The Tribunal did not have sufficient evidence to support that there the deductions were appropriate.

Decision

15. The Tribunal found that the Applicants were entitled to be granted an order for payment amounting to £1100.

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.

Legal Member:

Gabrielle Miller

Date: 18th November 2024