



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017.**

**Chamber Ref: FTS/HPC/CV/23/3557**

**Re: Property at 1/3 10 Archerhill Square, Glasgow, G13 4TD (“the Property”)**

**Parties:**

**Mr Anyanwu Obinna, 1/1 10 Hutchenson Road, Thornliebank, Glasgow, G46 7JG (“the Applicant”)**

**Mr Kashif Naeem, 68 Fraser Street, Cleland, Motherwell, ML1 5PX (“the Respondent”)**

**Tribunal Members:**

**Fiona Watson (Legal Member) and David Fotheringham (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for payment of the undernoted sum to the Applicant:**

**Sum of FOUR HUNDRED AND NINETY-FIVE POUNDS (£495) STERLING**

- **Background**

1. An application was submitted to the Tribunal under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking a payment order against the Respondent in relation to the return of a deposit paid under a private residential tenancy agreement.

2. A Case Management Discussion (“CMD”) took place on 15 January 2024 by conference call. Both the Applicant and the Respondent were personally present and represented themselves.
3. The Applicant submitted that he had paid the first month’s rent and the deposit of £675 to the Respondent when he moved into the Property. The tenancy started on 5 August 2023. Prior to moving in he had understood the Property to be furnished, but thereafter learned that it was in fact unfurnished. The Applicant reported to the Respondent that the washing machine was not working, and the Respondent refused to fix it. The Respondent thereafter served a Notice to Leave on the Applicant requiring him to remove from the Property by 10 September 2023. The Applicant removed from the Property by the deadline set and despite making several requests for return of his deposit, this was not repaid to him.
4. The Respondent submitted that he had intended to repay the deposit to the Applicant, however the Applicant failed to meet him at the Property at an arranged time to allow the return of the deposit and transfer of keys. The Respondent submitted that he had incurred costs of £180 in having the locks changed, as well as there having been rent arrears and an unpaid electricity bill to be deducted from the deposit.
5. The Respondent made an offer to the Applicant of payment in the sum of £495 being the deposit of £675 less the cost of the lock change. This was refused by the Applicant.
6. The CMD was adjourned to a Hearing for evidence to be heard from parties to determine whether or not the deposit of £675 should be paid in full to the Applicant or whether the Respondent is entitled to make deductions from same.
7. A Hearing took place by conference call on 20 May 2024. There was no appearance by, or on behalf of, either of the parties. The Respondent had notified the Tribunal by email of 7 May 2024 that he would be unable to attend the Hearing as he had to travel to Saudi Arabia for work. There was no

correspondence received from the Applicant prior to the Hearing to explain his failure to attend. The Applicant had been notified of the date of the CMD by letter dated 11 April 2024. The Tribunal was accordingly satisfied that both parties had received sufficient intimation of the date of the CMD. Due to the failure by the Applicant to appear or be represented, the Tribunal dismissed the application in terms of Rule 27(2)(b) of the Rules, in that the Applicant has failed to cooperate with the First-tier Tribunal to such an extent that the First-tier Tribunal cannot deal with the proceedings justly or fairly.

8. By way of email dated 24 May 2024, the Applicant requested permission to appeal the Decision of the Tribunal of 20 May 2024 (“the Decision.”). The Tribunal determined to refuse the application to appeal the Decision as said application did not specify a point of law upon which the application was based, nor specify any basis upon which the Tribunal could be said to have erred in law in coming to the Decision that it did. The Tribunal considered the Applicant’s email of 24 May 2024 and determined that under the circumstances, it would be in the interests of justice for the Tribunal to consider matters instead in terms of the provisions of Section 43 of the Tribunals (Scotland) Act 2014 and Regulation 39 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017. The Tribunal determined that it would exercise its discretion to review its Decision and would therefore recall the Decision and remit the matter to a further Hearing.

- **The Hearing**

- ***Applicant’s Evidence***

9. The Applicant submitted that on 3 August 2023 he paid rent and deposit and thereafter moved into the Property on 5 August 2023. When he moved in, he thought that the Property was furnished. Someone had been living in it prior to him moving in but the furnishings had belonged to the previous tenant. The Applicant submitted that the previous tenant advised him that the bed and wardrobe could be left if the Applicant paid for them and the Applicant agreed to this. The Applicant paid money to the previous tenant who sold the items to

him. The Applicant removed these items from the Property at the end of his tenancy as they belonged to him. There was no inventory of contents prepared by the landlord at the start of the tenancy which stated anything to be found in the Property as forming part of the tenancy.

10. The Applicant submitted that he asked the Respondent for the EPC rating for the Property. He had never met the Respondent. The Respondent had sent somebody else to meet with the Applicant to give him the keys. The Applicant submitted that the Respondent was not happy with him asking questions and the Respondent got angry with him and warned the Applicant not to text him anymore.
11. The Applicant submitted that on 10 August 2023 the Respondent told him that he was to leave the Property as the Respondent stated that he wished to sell it. The Applicant had only just moved in and he eventually found somewhere he was able to move into on the 6 September 2023.
12. Prior to moving, the Applicant asked the Respondent about the deposit being returned and the Respondent did not give him an answer. The Applicant contacted the three tenancy deposit scheme providers who all confirmed that they did not hold the deposit. The Applicant submitted that the Respondent had arranged on two occasions to meet with him, but on both occasions did not show up. It was submitted that it was agreed that the Respondent would give him the deposit back and the Applicant would return the key. The Applicant said to the Respondent that he wanted a bank transfer and gave him his account details but the Respondent failed to transfer the money, and did not turn up at the Property. He blocked the Applicant's calls, and thereafter the Applicant took advice from Citizens Advice Bureau who also tried to contact the Respondent and received no response from him.
13. The Applicant submitted that he was a student at the time and finding another deposit to move to a new Property was very difficult.

14. The Applicant submitted that the parties were supposed to meet on two occasions. On the first occasion, the Respondent sent a message saying that he was not able to make it. On the second occasion the Applicant had asked the Respondent to transfer the deposit to his bank account and the Respondent said that he would bring cash, which the Applicant did not want the Respondent to do. The Applicant tried to call the Respondent to make agreement regarding payment, but the Respondent did not answer and did not attend. The Applicant submitted that he did not attend on the second occasion because the Respondent failed to confirm that he would make a bank transfer of the deposit. The Applicant submitted that the Respondent made no attempts nor any efforts to obtain the keys before changing the locks.
15. The Applicant submitted that at no point did he refuse to allow the Respondent to attend the Property to carry out an inspection, but he made it clear to the Respondent that any such inspection would require to take place in the Applicant's presence.

### ***Respondent's Evidence***

16. The Respondent submitted that it was the Applicant's wife who mainly communicated with him from the outset. The Respondent was not in the UK at the time of arranging the tenancy as he was working abroad. The Property was advertised on gumtree. The Applicant's wife viewed the Property and they agreed the rent and the deposit. The Respondent stated that he did not take up any references for the Applicant and did not meet him personally. He took him on as a tenant in good faith, as an international student. The Respondent stated that he put a lot of trust in the tenant and did not carry out his usual due diligence.
17. The Respondent stated that early on in the tenancy the Applicant became aggressive. The Applicant had asked for a copy of the EPC and this was provided. The Respondent stated that instead of the Applicant making the Property home, he was asking questions and requesting documentation. The

Respondent stated that his communications were aggressive and the relationship turned sour. The Respondent stated that it all became too much. The Respondent gave the Applicant evidence of his landlord registration as well as proof of ownership, but the situation became very stressful.

18. The Respondent stated that he returned to the UK and wanted to visit the Applicant on 9 September to meet him and reach an agreement but the Applicant did not show up.

19. The Respondent submitted that it was correct that the parties had agreed to meet prior to the 9 September and that the Respondent did not attend. The Respondent submitted that an inspection of the Property had been agreed but that the Applicant had threatened him with the Police and the Respondent had reminded the Applicant that he had a right of access for inspection upon giving 48 hours' notice. The Respondent stated that he was unable to attend that inspection because of personal circumstances. After that it had been agreed that the keys would be handed back on 9 September and so the Respondent did not think that there was any point in attending the Property twice as he did not want the stress of two visits.

20. The Respondent submitted that he had required to change the locks at a cost of £180 because the Applicant had failed to return the keys to him as had been agreed on 9 September. The Respondent submitted that the Applicant had insisted that full payment of the deposit be made to his account when the Respondent wished to simply hand this over in cash, upon receipt of the keys.

21. The Respondent submitted that he had requested that the deposit would only be paid back once an inspection has been carried out but the Applicant had refused to agree to same. The Respondent submitted that as the keys had not been returned, he required to replace the lock in order to access the Property.

22. The Respondent submitted that there were five days rent which had not been paid, for the period between 5 September and 9 September when the locks were changed. These arrears amounted to £112. The Respondent submitted that these arrears should be deducted from the deposit.

23. The Respondent submitted that he also suffered a loss of £300 in relation to the items of furniture removed from the Property by the Applicant. The Respondent submitted that these items of furniture were left in the Property by the previous tenant (referred to as George). The Respondent submitted that these items of furniture belonged to the Respondent following them being left in the Property by George. It was submitted that the Applicant had no right to remove these items of furniture and that had the Respondent sold these items of furniture of second-hand sale value, he would have obtained £300 and therefore this sum should be deducted from the deposit held.

- **Findings in Fact**

24. The Tribunal made the following findings in fact:

- (i) The parties entered into a Private Residential Tenancy Agreement (“the Agreement”) which commenced 5 August 2023 and ended on or around 9 September 2023;
- (ii) The Respondent paid a deposit to the Respondent in the sum of £675 at the commencement of the tenancy;
- (iii) The Respondent had failed to return the deposit to the Applicant at the end of the tenancy;
- (iv) The Applicant failed to return the keys to the Property to the Respondent, requiring the Respondent to change the locks at a cost of £186, for which cost the Applicant was liable.

- **Reasons for Decision**

25. It was a matter of agreement between the parties that the sum of £675 was paid by the Applicant to the Respondent as a deposit, and which deposit was not lodged within a tenancy deposit scheme in terms of the Tenancy Deposit Scheme (Scotland) (Regulations) 2012. A previous order has been granted by the Tribunal in relation to this failure.

26. The Respondent sought to make deductions from the deposit on three counts: the cost of a lock change; rent arrears; and loss incurred by removal of furniture.
27. The Tribunal considered the evidence of the parties in relation to the arrangements which had been made between them for return of the keys. The Tribunal was satisfied on the basis of the evidence before it, that an arrangement had been made between the parties to meet on 5 September 2023 and that the Respondent had failed to meet on that date. This was by his own admission. It was therefore by the Respondent's own actions that further time passed before the next meeting on 9 September and at which point the locks were changed. It was a matter of agreement that the keys were not returned by the Applicant to the Respondent, and on that basis the Tribunal was satisfied that the Respondent had incurred the necessary cost of changing the locks and therefore could deduct the cost of the lock change from the deposit held. However, having considered the evidence in relation to the Respondent's own failure to meet the Applicant at an earlier date to obtain the keys, the Tribunal was not satisfied that the Respondent was entitled to the deduction of five days' worth of rent on the basis that the Tribunal considered that the Respondent himself had contributed to this delay being incurred.
28. The Tribunal was not persuaded by the Respondent's evidence in relation to the furniture belonging to the former tenant having been given to the Respondent for use in the Property. The Tribunal was persuaded by the Applicant's evidence that the Applicant had purchased these items of furniture from the former tenant and therefore was entitled to take those items of furniture with him upon his vacation from the Property. By his own admission, the Respondent did not provide an inventory of contents of the Property at the outset of the tenancy and therefore provided no evidence of what he claimed had been provided to the tenant as part of the tenancy. The Tribunal was not persuaded by the Respondent's evidence in this regard and was not persuaded that there had been any agreement between the former tenant and the Respondent that the furniture was left to the Respondent. Furthermore, the Tribunal was not persuaded by the Respondent's position that he had suffered any loss. The Respondent's position that he could have obtained the price of



£300 by selling these items of furniture on the second-hand market was not backed-up by any evidence.

29. Accordingly, the Tribunal decided that the Respondent was entitled to deduct the cost of the lock change only from the deposit held and therefore the Tribunal decided that the Respondent is due to repay to the Applicant the sum of £495 pounds.

- **Decision**

30. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment of the undernoted sum to the Applicant:

Sum of FOUR HUNDRED AND NINETY-FIVE POUNDS (£495) STERLING

### **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.**

**Fiona Watson  
Legal Member/Chair**

**Date: 18 November 2024**