

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of The Private Housing (Tenancies) Act 2016 (“the 2016 Act”) and under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”)

Chamber Refs: FTS/HPC/CV/23/2175 and FTS/HPC/PR/23/2200

Re: Property at 1/3 Clearburn Road, Edinburgh, EH18 5EZ (“the Property”)

Parties:

Mr Gregory Mitchell, 47/1 Dundee Terrace, Edinburgh, EH11 1DW (“the Applicant”); and

Ms Annette Barwick, 8 Paisley Drive, Edinburgh, EH8 7LR (“the Respondent”),

Tribunal Member:

G McWilliams- Legal Member

Decision in absence of the Respondent

Background

1. The Applicant had applied under Rules 103 and 111 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the 2017 Rules”) (Application for an order for payment where a landlord has not paid the deposit into an approved scheme and Application for civil proceedings in relation to a private residential tenancy).

Case Management Discussions

2. Case Management Discussions (“CMD’s”) had proceeded by remote telephone conference calls on 5th December 2023, and 26th March, 15th August and 7th October 2024. Reference is made to the Notes on CMDs. A further Case Management Discussion (“CMD”) proceeded remotely by

telephone conference call at 10.00am on 12th December 2024. The Applicant, Mr Mitchell, attended. The Respondent, Ms Barwick, did not attend and was not represented. The Tribunal noted that, following the last CMD on 7th October 2024, service of both Applications on Ms Barwick, by advertisement on the Tribunal's website, had proceeded between 4th November 2024 and 12th December 2024. The Tribunal also noted that service of the Applications papers, including notification of the CMD on 12th December 2024, by recorded delivery post to the Property address, 1/3 Clearburn Road, Edinburgh, EH18 5EZ, had been made on 10th December 2024. The Tribunal's office had checked the tracking number for that service and confirmed that the papers had been delivered to the Property address. The Tribunal was satisfied that service of the Applications papers and notification of the CMD, on 12th December 2024, had been successfully carried out.

3. Mr Mitchell stated that he had not had any communications with Ms Barwick since the last CMD on 7th October 2024. He asked that his Applications be determined and sought the grant of an order for payment comprising his tenancy deposit sum, of £500.00, made at the commencement of his tenancy in February 2013, and a suitable compensation amount in respect of Ms Barwick's failure to lodge his deposit in an approved tenancy deposit scheme. Mr Mitchell stated that he had had no knowledge that the deposit was not protected in a scheme prior to his contact with Ms Barwick at the termination of his tenancy, in April 2023.

Statement of Reasons for Decision

4. Section 71 of the 2016 Act provides as follows:

(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.

5. Regulation 3 of the 2011 Regulations (which came into force on 7th March 2011) provides as follows:

“(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—

- (a) pay the deposit to the scheme administrator of an approved scheme; and

(b) provide the tenant with the information required under Regulation 42.”

6. Regulation 10 of the 2011 Regulations further provides as follows:

“If satisfied that the landlord did not comply with any duty in Regulation 3 the First-tier Tribunal -

(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and

(b) may, as the First-tier Tribunal considers appropriate in the circumstances of the application, order the landlord to—

(i) pay the tenancy deposit to an approved scheme; or

(ii) provide the tenant with the information required under Regulation 42.”

7. Accordingly, the Tribunal has jurisdiction in relation to claims by tenants (such as the Applicant) for payment of monies by a landlord (such as the Respondent) in respect of a tenancy. The Tribunal also has jurisdiction to decide on claims by a tenant against a landlord who has not paid a tenancy deposit into an approved tenancy deposit scheme.

8. The Tribunal considered all of the Applications papers, and the submissions of Mr Mitchell at each of the CMD’s. They also referred to the terms of the e-mails from the three Scottish tenancy deposit schemes, which all stated that they had never held a deposit in respect of the Property, previously submitted by Mr Mitchell. Having done so, the Tribunal found in fact, on a balance of probabilities, that Ms Barwick received a tenancy deposit sum of £500.00 from Mr Mitchell at the commencement of the parties’ tenancy in February 2013. She did not place that deposit into a Scottish tenancy deposit scheme and did not repay the deposit amount to Mr Mitchell after his tenancy of the Property ended in April 2023. The Tribunal found in law that Ms Barwick owes the tenancy deposit amount of £500.00 to Mr Mitchell and should also pay Mr Mitchell an appropriate amount as compensation for her failure to lodge his deposit in an approved tenancy deposit scheme.

9. Ms Barwick had not lodged representations with the Tribunal or attended at a CMD to provide any evidence, and/or make any submission to oppose and contradict the orders sought by Mr Mitchell, and his basis for seeking such orders.

10. The Tribunal was satisfied that it was reasonable to grant an order for payment by Ms Barwick to Mr Mitchell of his deposit amount of £500.00 as well as compensation of £1,000.00, an amount which is twice the amount of the tenancy deposit, being a total sum of £1,500.00. In reaching their decision in respect of the amount of compensation to be paid the Tribunal had regard to relevant case law, the length of the parties’ tenancy, of just over 10 years, and the fact that neither the Tribunal nor Mr Mitchell had received any explanation from Ms Barwick as to why the

deposit had not been lodged in an approved scheme. Having considered and weighed the available evidence and factors the Tribunal found that an amount of £1,000.00 was a fair, proportionate and just sanction. In particular the Tribunal determined that a sanction amount of twice the tenancy deposit reasonably took account of the considerable period of time that Mr Mitchell's deposit was not protected.

11. Accordingly, the Tribunal determined that an order for payment to Mr Mitchell by Ms Barwick of the total sum of £1,500.00, should be made.

Decision

12. Therefore, the Tribunal made an order for payment by the Respondent, Ms Annette Barwick, to the Applicant, Mr Gregory Mitchell, of the sum of ONE THOUSAND FIVE POUNDS (£1,500.00) 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.

G McWilliams

12th December 2024

Legal Member

Date