



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/24/0924

Re: Property at 21/6 Stead's Place, Edinburgh, EH6 5DY (“the Property”)

Parties:

Mrs Rukayat Iyanda, Flat 12, 10 Hawkhill Close, Edinburgh, EH7 6FG (“the Applicant”)

Shovakhar Gautam, 4 Bannerman Terrace, Edinburgh, EH17 8NF (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be dismissed.

Background

1. The Applicant lodged an application on 26th February 2024 under Rule 111 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) seeking repayment of a sum of £1400 paid by way of a deposit.
2. Lodged with the Application were:
 - a. Copy Tenancy Agreement
 - b. Bank Statement showing proof of payment of the deposit
3. The Application was served on the Respondent by Sheriff Officer on 14th June 2024.
4. On 2nd July 2024 the Tribunal received an email from the Respondent’s solicitor containing a Written Submission, which confirmed that the deposit had not been

placed in a Scheme until 16th January 2024 and went on to say that the property had been left in a mess and the deposit had been returned in full by the tenancy deposit scheme as the Applicant had not engaged in the process.

Case Management Discussion

5. The Case Management Discussion (“CMD”) took place by teleconference. The Applicant represented herself. The Respondent did not call in and was not represented. The Written Submissions did not say that no one would appear, and the Clerk telephoned the solicitor’s office. The solicitor was not available.
6. In terms of Rule 29 of the Rules the Chairperson was satisfied that the Respondent had had sufficient notice of the CMD and that she had enough information to allow her to proceed in the absence of the Respondent.
7. The Chairperson explained to the Applicant the purpose of a CMD in terms of Rule 17.
8. The Chairperson ascertained from the Applicant that she had moved in to the property on 11th March 2023 and moved out on 16th January 2024. She paid a deposit of £1400 at entry.
9. The Applicant confirmed that she had brought the Application because she had not received her deposit back. The Applicant said that she had not received any correspondence from the deposit scheme regarding the Respondent’s request for the deposit to be returned to him.
10. The Chairperson decided that the CMD would need to be continued as she did not have enough information before her to make a decision. Nothing had been lodged by the Respondent to prove that the tenancy deposit scheme had returned the deposit, or that there had been any attempt to contact the Applicant about it. The Chairperson said that she would issue a Direction to the respondent for production of the information.

Procedure Subsequent to CMD

11. It should be noted that the Applicant had also made an application under the Tenancy Deposit Schemes (Scotland) Regulations 2011, which had case reference FTS/HPC/PR/24/0922, and which called at the same time as the CMD in this case. The Chairperson decided that, in the absence of the Respondent, she had sufficient information to make a decision and issued an order for payment of £1400.
12. In relation to this case the Chairperson issued a Direction to the Respondents as follows:

“The Tribunal, on its own initiative and for the purpose of making inquiries, give the following Direction to the Respondent as to the conduct and progress of this Application in terms of Section 16 of Schedule 1 to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017:

The Respondent is required to provide:

- 1. All correspondence between him and Safe Deposits Scotland in relation to his claim for the deposit to be returned to him.*
- 2. Confirmation from Safe Deposits Scotland of the method of contact used to contact the Applicant regarding the Respondent's request for return of the deposit.*

The said documentation should be lodged with the Chamber no later than close of business on 30th August 2024.

Reason for Direction

To enable the tribunal to decide if it can deal with the matter or if it has already been dealt with by the tenancy deposit scheme.”

13. On 30th July 2024 the Respondent's solicitor lodged a copy of a Certificate from Safe Deposits Scotland showing that the deposit was lodged on 16th January 2024 and that the status of the case was “Tenancy closed, Deposit repaid”.
14. On 7th August 2024 the Applicant sent an email to the Tribunal pointing out that the document lodged by the Respondent did not satisfy the terms of the Direction.

Continued Case Management Discussion

15. The Continued Case Management Discussion (“CCMD”) took place by teleconference. The Applicant represented herself. The Respondent called in and was represented by his son, Khima Gautam.
16. The Chairperson introduced everyone and explained to the parties the purpose of a CMD in terms of Rule 17.
17. The Chairperson went over the terms of the CMD Note from the CMD which took place on 19th July 2024, and clarified for the Respondent's representative that there had been two cases. The one in relation to compensation for the deposit not having been placed in a Scheme had been dealt with, with an order for payment of £1400 being made. The remaining case was for return of the deposit, the Applicant's position being that she had not had any notification from Safe Deposits Scotland Limited and had not had the chance to respond.
18. The Respondent's representative accepted that the Direction had not been fully complied with. He thought that he should be able to obtain the information.
19. The Chairperson decided that she could not deal with matters further without the information and continued the CMD for it to be provided.

Procedure Subsequent to Continued Case Management Discussion

20. On 13th January 2025 the Respondent lodged some documents in answer to the Direction which were:

- Email trail with Safe Deposits Scotland Limited (“SDS”) in which SDS confirmed that they had sent the tenant a copy of the Respondent’s proposal regarding retention of the deposit on 17th January 2024, the tenant did not respond and therefore SDS were arranging to pay the deposit to the Respondent
- Email trail with SDS dated 25th July 2024 in which the Respondent confirms he gave a phone number for the Applicant but did not have an email address or forwarding address, asking for confirmation that SDS contacted the Applicant and being told that if no email address or forwarding address had been provided they would not have contacted the Applicant
- Written Submission about the state of the property and why the Respondent wished to retain the deposit
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21. On 14th January 2025 the Applicant sent an email to the Tribunal asking that there be no delaying tactics.

Second Continued CMD

22. The Continued Case Management Discussion (“CCMD”) took place by teleconference. The Applicant represented herself. The Respondent was represented by his son, Khima Gautam.

23. The Chairperson introduced everyone and went over previous CMD Notes with the parties, confirming that all the information was now before the Tribunal, having been contained in the emails lodged by the Respondent on 13th January 2025.

24. The Chairperson confirmed that having considered all the evidence before it the Tribunal decided that it had no option but to dismiss the Application. It was clear from the email trails that the matter of whether or not the deposit should be returned had already been dealt with by SDS, and the deposit had been returned to the Respondent by them.

25. The Chairperson explained that the Tribunal does not have any jurisdiction to oversee SDS, or to review any decisions which it has taken. If the Applicant is unhappy with how SDS has handled the claim she will require to contact them and invoke any complaints procedure which they may have.

Findings In Fact

- i. The parties entered in to a tenancy agreement for the property commencing on 11th March 2023;
- ii. The Applicant paid a deposit of £1400 to the Respondent;
- iii. The Applicant vacated the property on 13th January 2024;
- iv. The Applicant contacted the Respondent about the deposit;
- v. The Respondent placed the deposit in to a scheme with SDS on 16th January 2024;
- vi. The Respondent contacted SDS asking for return of the deposit and giving a breakdown and a telephone number for the Applicant;
- vii. SDS returned the deposit to the Respondent.

Reasons For Decision

26. It was clear from the email trails that the matter of whether or not the deposit should be returned had already been dealt with by SDS, and the deposit had been returned to the Respondent by them, and having considered all the evidence, and given that the Tribunal does not have any jurisdiction to oversee SDS, or to review any decisions which it has taken, the Tribunal had no option but to dismiss the Application.

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.

A. Kelly

21 February 2025

Legal Member/Chair

Date