



**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 (“the Act”)**

**Chamber Ref: FTS/HPC/CV/24/2274**

**Re: Property at 69 Stoneybank Terrace, Musselburgh, EH21 6NQ (“the Property”)**

**Parties:**

**Miss Anna Chiumento, 29 Joppa Road, Edinburgh, EH15 2HA (“the Applicant”)**

**Strathearn Limited c/o Umega Lettings, Director of Strathearn Ltd c/o Ms Sarah Strachan Umega Lettings & Estate Agents, The North Quarter, 496 Ferry Road, Edinburgh, EH5 2DL (“the Respondents”)**

**Tribunal Members:**

**Steven Quither (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application is REFUSED**

**BACKGROUND**

1. This is an application for repayment of rent arising out of a Private Residential Tenancy (“PRT”) between the parties in respect of the Property commencing 19 August 2022.
2. The Application was made on 19 May 2024 and, after requests for further clarification and information from the Tribunal dated 21 May, 4 June and 11 July 2024, responded to by the Applicant on 21 May, 17 June and 19 July 2024 respectively, was accepted by Notice of Acceptance of 12 August 2024, by

virtue of which a Case Management Discussion (“CMD”) was duly fixed for 4 December 2024 (which did not proceed) and then 11 February 2025.

3. Prior to the CMD, a Notice of Direction dated 26 October 2024 was issued to the parties requiring them to lodge various documentation and clarify various points, chief of which was the jurisdiction of the Tribunal to review the question of any part of the deposit paid by the Applicant being returned to her, given that she did not apparently dispute the deposit being returned to the Respondents at conclusion of the tenancy under Regulation 25(1)(b) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”).
4. The Respondents replied to said Direction by email of 12 November 2024, enclosing 15 documents and, after being afforded more time to do so, the Applicant replied by emails of 26 and 27 November 2024, enclosing 26 documents.

#### **CASE MANAGEMENT DISCUSSION on 11 FEBRUARY 2025**

5. The CMD took place by teleconference and duly commenced shortly after 2pm with parties in attendance, the Respondents being initially represented by Courtney Hazlett and later being joined by Sarah Strachan.
6. In her submission to the Tribunal and in response to questions asked by the Tribunal, the Applicant advised and confirmed:--
  - a) Originally, she proposed to leave the Property on 22<sup>nd</sup> December 2023, per her Notice to Leave dated 27 November 2023 (Applicant’s Production 5 (“A5”) (albeit said Notice provided 25 December 2023 ie Christmas Day, as a “move out date”), confirmed and acknowledged by the Respondents on 28 November (A6);
  - b) By email of 8 December 2023 (A10), she asked to “**withdraw our notice** for the time being”, due to issues which had arisen with her pending house purchase;
  - c) By email of 12 December 2023 (A11), the Respondents advised, after acknowledging receipt of said email,  
“I have received this and will action today.

To confirm, are you looking to withdraw entirely and then you can resubmit your notice once you have a confirmed date for your new home ?”;

- d) By further email of 14 December 2023 (A12), the Applicant advised, “We have today had confirmation that we will be completing on 20th December, therefore we will stick with the original notice for 22<sup>nd</sup> December.

Please confirm and I will ensure payment for 17<sup>th</sup> is set up correctly”

- e) By further email of 14 December 2023 (A13), the Respondents advised, “As your notice has been retracted, the landlord is entitled to request that you resubmit their notice, which they have asked you to do. The reason behind this is that to accept your notice for 22<sup>nd</sup> today would mean that the landlord would have a long void period because it is only a week away so unfortunately, I am going to have to ask that you re-submit your 28 day notice [here](#) “
- f) The Respondents had accepted 22<sup>nd</sup> December as her “move out date”, by virtue of the fact they had arranged for her to receive a final gas bill to that date (A24);
- g) That being so, they were not entitled to charge her rent beyond that date;
- h) Beyond, in essence, losing track of and/or not fully understanding the dispute resolution mechanism provided in the Regulations, she could not provide any further advice as to why she did not fully engage with it, leading to the disputed amount being released to the Respondents (A1) (although it is noted that in the “Timeline of Events” submitted with the application, she gave “work commitments and being unwell” as the reason why she failed to submit evidence as requested by SafeDeposits Scotland (“SDS”)) ;
- i) She considered the Tribunal to be her last resort for resolution of whether she was to pay rent for the additional period beyond 22 December 2023, in the sum of £495-27.

7. Mmes Hazlett and Strachan for the Respondents, advised and confirmed:--

- a) When there seemed to be a possible issue with the Applicant’s original move out date of 22 December, the Property was taken off their marketing

website, a potential viewing of it on 11 December having been cancelled (A21 & A22);

- b) The email of 12 December (A11) was merely seeking further details about the Applicant's intentions to withdraw her original notice to leave but made clear her request to stay beyond 22 December 2023 was acceptable;
- c) They did not feel that the clarification requested required any acceptance by the Applicant, given the clear agreement to her request to stay in the Property beyond 22 December.

8. Parties were content for the Tribunal to then consider their respective positions, based on their advices today and the documentation lodged by them, as previously referred to.

### **FINDINGS IN FACT**

9. The parties agreed a Private Residential Tenancy ("PRT") in respect of the Property commencing 19 August 2022, at a rent of £1195 per calendar month and with payment of a £1395 deposit, which deposit was paid and lodged with SDS.
10. By Notice to Leave of 27 November 2023, the Applicant advised of her intention to leave the Property on 25 December 2023 (A5), which Notice was accepted by the Respondents on 28 November, confirming a move out date of 22 December 2023 (A6).
11. By email of 8 December 2023 (A10), the Applicant sought to withdraw said Notice.
12. By email of 12 December 2023 (A11), the Respondents accepted said request and sought clarification of what procedure the Applicant then wished to follow.
13. By email of 14 December 2023 (A12), the Applicant advised that she no longer wished the notice to be treated as withdrawn and wished to proceed, after all, to move out of the Property on 22 December 2023.

14. By email of 14 December 2023 (A13), the Respondents advised that since the original notice had been withdrawn, the Applicant would now require to submit a new notice.
15. By virtue of this exchange of correspondence, the original move out date of 22 December was cancelled.
16. The Applicant vacated the Property on 22 December 2023 but the Respondents treated 5 January 2024 as her actual move out date, due to the withdrawal of the original notice to leave.
17. The original deposit amount was sufficient to cover the disputed further rent of £495-27 to 5 January 2024 and the procedure for return of a disputed deposit, or part thereof, provided in the Regulations was commenced with SDS but did not proceed due to lack of provision of evidence by the Applicant (A1).
18. Accordingly, said sum of £495-27 was returned to the Respondents, who applied it towards payment of rent to 5 January 2024.
19. Said rent was lawfully due to the Respondents. .

### **REASONS FOR DECISION**

20. The Tribunal felt the whole crux of the case turned on the exchange of correspondence between 8 and 14 December 2023, previously referred to.
21. The Applicant's position was that the email from the Respondents of 12 December (A11) was, in effect, a counter offer from them of her original request of 8 December (A10) to withdraw her Notice to Leave (A5), but it appears clear from the Respondents' email that they had already given effect to her request by their reference to "action(ing) today".
22. That being so, by the time the Applicant reverted on 14 December seeking to revert to the original position, it was too late for her to do so and she was then,

in essence relying on some goodwill on the Respondents' part, which was entirely in their gift.

23. As opposed to insisting on a full 28 day notice period starting anew from 14 December 2023, by email of 20 December 2023 (A18), the Respondents suggested a compromise date of 5 January 2024, so some goodwill does appear to have been exercised.

24. In that email also, the Respondents made the Applicant aware of the deposit dispute resolution mechanism, referred to in her email response of 20 December also (A19). In that email she expressed also her belief of having "a strong claim and evidence to support (her) position."

25. However, the Applicant did not pursue her claim under that procedure, leading to it being, essentially, dismissed and the disputed amount being paid to the Respondents (A1). In her response to the Tribunal's Direction, she advised that she considered herself "unqualified" to interpret the Regulations and was seeking to rely on Regulation 38 as authority for the Tribunal now to deal with same.

26. However, Regulation 38 forms the second part of the "Review" section of the Regulations, the first comprising Regulation 37, which provides for the (deposit) scheme administrator to review an adjudicator's decision if an application for that to be done is made within 10 days of the administrator's decision, which can only proceed on the basis of an error in fact and/or law in said decision.

27. The Applicant appears to have misunderstood the dispute resolution mechanism. Where she feels it is for the Tribunal to address any error in fact and/or law made by the adjudicator, in fact Regulations 37 & 38 provide that that role is for the scheme administrator and Regulation 38(2) states that if the administrator returns an application to a different adjudicator to the adjudicator who made the original decision, that (second) adjudicator's decision is final.

28. It also appears that by email exchange on 11 March 2024 (A2), the Applicant made enquiry to SDS about the “the process for reviewing the evidence”, to which SDS requested the Applicant to revert to them with any questions. Had the Applicant pursued that correspondence, she would presumably have been directed to the Regulations 37 & 38 review procedure, but there is nothing to indicate she did so, so she lost the opportunity to do so.

29. It is not for the Tribunal to speculate as to what the outcome might have been if the Applicant had pursued that procedure, which the Tribunal considers is what the Applicant should have done and, per the Regulations, appears to be the only procedure available to her to seek resolution of a dispute over a deposit. In any event, the Tribunal is satisfied the Applicant was due to pay rent till 5 January and, accordingly, her application for repayment of same from the Respondents is refused, insofar as it now falls to the Tribunal to deal with that question in this application.

30. Accordingly, the Tribunal considers it just to refuse this application.

### **DECISION**

31. To refuse 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.**

# Steven Quither

**26 FEBRUARY 2025**

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**Legal Member/Chair**

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**Date**