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)

Chamber Ref: FTS/HPC/PR/24/4003

Re: Property at 8/3 Blandfield, Edinburgh, EH7 4QJ ("the Property")

Parties:

Mr Witness Mnyulwa, 46/5 North Gyle Grove, Edinburgh, EH12 8LF ("the Applicant")

Craigsco Ltd, 19 Kinloch Drive, Glenrothes, KY7 4DD ("the Respondent")

Tribunal Members:

Virgil Crawford (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that

BACKGROUND

1. The Applicant presented two separate applications to the Tribunal, one seeking that a penalty be imposed upon the Respondent due to the Respondent's failure to lodge a tenancy deposit with an approved scheme in accordance with the Tenancy Deposit Scheme (Scotland) Regulations 2011 ("the TDS Regs") (PR/24/4003) and an application seeking an order for payment by the Respondent to the Applicant in an amount of £300.00, that being the amount of the deposit which has not yet been repaid (CV/24/4426).

2. The Respondent in each case was designed as being "Craigsco Ltd, Mr Andrew Floras, 19 Kinloch Drive, Glenrothes, KY7 4DD".

3. There was no written lease between the Applicant and the person to whom he paid a tenancy deposit and, indeed, appears to have paid rental payments for a number of months.

4. The Applicant provided proof that a tenancy deposit of £300.00 was paid on 27th November 2023. The tenancy ended on 24th June 2024. The tenancy deposit was never returned. The tenancy deposit was never lodged with an approved scheme.

5. After the applications had been lodged with the Tribunal, the Tribunal, in accordance with standard practice, arranged for service of the case papers upon the Respondent. The case papers were served at the registered address of Craigsco Ltd, that being 19 Kinloch Drive, Glenrothes, KY7 4DD.

6. In advance of the case management discussion, solicitors for Craigsco Ltd lodged written representations with the Tribunal. These representations, in essence, stated that Andrew Floras was not connected in any way with Craigsco Ltd. The property in question was, in fact, rented by Craigsco Ltd to two other named individuals, the lease being dated 30th October 2020 and the start date of the tenancy being 20th November 2020.

THE CASE MANAGEMENT DISCUSSION

7. The Applicant participated personally in the case management discussion. Craigsco Ltd was represented by Miss Seaward of Ennova Law, Dundee.

8. The Applicant confirmed his applications were seeking to have a penalty imposed upon Andrew Floras for not lodging the tenancy deposit with an approved scheme and, separately, an order for repayment of the deposit, that being an amount of £300.

The Respondent

9. Miss Seaward confirmed the position of Craigsco Ltd – against whom the application was directed – as set out within written submissions previously. The position of the company is as follows:-
    - The Property is owned by Craigsco Ltd.
    - The Property was rented by Craigsco Ltd to two other named individuals, the lease being dated 30th October 2020 and the start date of the tenancy being 20th November 2020.
    - Craigsco Ltd have presented two separate applications to the Tribunal themselves, one seeking an order for eviction of the tenants detailed within the lease (EV/24/3383) and one seeking payment of arrears of rent (CV/24/3387).
    - Information was provided by Companies House confirming that the only Director of Craigsco Ltd was an individual by the name of Julian Antoni Craig. No other person was authorised to deal on behalf of the company.

- A letter from Edinburgh City Council was provided which indicated that investigations were being undertaken by the local authority in relation to the Property being used as a house in multiple occupation and stating the local authority had information which suggests the Property may be sublet either to long term tenants or potentially utilising the Property as an unlicensed short term let, in either event that being unlawful in terms of the Housing Scotland Act 2006 and the Civic Government Scotland Act 1982.
- There was separate information which indicated that one of the named tenants within the written lease was using the name Andrew Floras as an alias and had unlawfully sublet the Property to the Applicant.

- In the circumstances, Craigsco Limited disputed any responsibility for a breach of the TDS Regs on the basis they had never let the Property to the Applicant nor had they received any tenancy deposit from the Applicant.

10. In essence, it appears to be the case that the Applicant has been the victim of a fraud at the hands of a person claiming to be a Mr Andrew Floras. The exact identity of that person is unknown although there is a suggestion that he may be an alias of a person to whom the Property was previously let.

The Applicant

11. The Applicant confirmed that he did not have a written lease. He had never met the person who goes by the name of Andrew Floras. His communications within this person were by way of electronic means following an introduction by a third party.

12. While the Applicant transferred money to a bank account, details of which were provided to him, and provided proof that the tenancy deposit and various rental payments had been paid, he was unable to contradict the information placed before the Tribunal on behalf of Craigsco Ltd and was unable to say who the person Andrew Floras really was.

Discussion

13. The Tribunal considered the possibility of continuing the applications to enable the Applicant to make enquiry with a view to attempting to identify Mr Floras, or the true identity of the person holding himself out to be Mr Floras. It became apparent, however, that there was no realistic prospect of the Applicant managing to do that within any reasonable time, if at all. The Applicant sought advice from the Tribunal as to how he might proceed to do so. The Tribunal, of course, cannot advise parties in relation to such matters.

14. In the circumstances, on the basis of the written submissions and supporting documentation provided by Miss Seaward on behalf of Craigsco Ltd, and in the absence of any contradictory information being provided to the Tribunal by the Applicant, the Tribunal concluded that there was no proper basis for orders being granted against Craigsco Ltd.

15. The Tribunal also considered that, on the basis the identity of the person holding himself out to be Andrew Floras is unknown, but that, whoever that person is, he most certainly does not reside at 19 Kinloch Drive, Glenrothes, Fife, it was not appropriate to grant payment orders against an unknown person at an address which it was known he was not residing. In the circumstances, the Tribunal refused the application.

DECISION

The Tribunal refused 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.

Virgil Crawford

8th April 2025

Legal Member/Chair **Date**