



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/CV/24/3105

Re: Property at Flat 0/1 15 Partickhill Road, Glasgow, G11 5BL (“the Property”)

Parties:

**Mr David Hughes and Dr Catherine Eileen Hughes, 3 Murchie Drive, Prestwick,
KA9 2ND (“the Applicants”)**

**Dr Mark Littlewood and Amy Carroll, 12 Maude View Road, Hawea Flat, 9382,
New Zealand (“the Respondents”)**

Tribunal Members:

Gillian Buchanan (Legal Member)

Decision (in absence of the Respondents)

At the Case Management Discussion (“CMD”) which took place by telephone conference on 30 October 2024 the Applicants were in attendance. The Respondents were neither present nor represented.

The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) had been satisfied relative to the Respondents having received notice of the CMD and determined to proceed in the absence of the Respondents in terms of Rule 29.

The CMD was in respect of this matter and the related case bearing reference FTS/HPC/PR/24/2894.

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

Background

The Tribunal noted the following background:-

- The First Respondent leased the Property to the Applicants in terms of a Short Assured Tenancy Agreement (“the SAT”) that commenced on 28 August 2015 for the period to 27 August 2016. The SAT continued thereafter on a month to month basis.

- The deposit payable in terms of the SAT was agreed to be £750.
- On 24 August 2015 the Applicants paid by bank transfer a sum of £1500, being the deposit together with the first months rent of £750, to the nominated bank account of the First Respondent's Letting Agent.
- The Applicants vacated the Property in April 2024.
- The Applicants have been unable to secure the return of the deposit.

The Case Management Discussion

In addition to the application, the Tribunal had regard to the following oral submissions from the Applicants in response to question from the Tribunal:-

- At the outset of the SAT the Applicants communicated with a Letting Agent for the First Respondent relative to viewings of the Property and the SAT.
- Thereafter the Applicants dealt with the Second Respondent on behalf of the First Respondent. She is believed to be his partner.
- Ongoing rent was paid into a different bank account to that which the deposit and first months rent was paid into.
- The Applicants did not receive a written receipt for the deposit paid. However, receipt of the funds is effectively acknowledged in the email of 28 August 2015 from Jacqui Lamb of the First Respondent's Letting Agent to the First Applicant and the Respondent.
- The Applicants assumed the deposit had been paid into an approved scheme particularly having regard to Clause 6 of the SAT.
- The Applicants have checked with the three approved deposit schemes in Scotland. None of them have any record of the deposit.
- The Applicants contacted the Letting Agent with whom they dealt at the outset, Greg Dykes. He claimed no knowledge of the deposit.
- The Applicants note title to the Property now to be in the name of a Trust with effect from 31 August 2018. They have had no contact from the Trust and were unaware of the title being in the Trust's name until receipt of the paperwork from the Tribunal.
- The Applicants believe the First Respondent owned 3 or 4 other properties which he rented out.
- The First Respondent is a psychiatrist, now in New Zealand.
- Despite their efforts and dialogue with the Respondents subsequent to their removal from the Property, the Applicants have had no meaningful response from the First Respondent with regard to the return of the deposit which remains unpaid.

Findings in Fact

- The First Respondent leased the Property to the Applicants in terms of a Short Assured Tenancy Agreement ("the SAT") that commenced on 28 August 2015 for the period to 27 August 2016. The SAT continued thereafter on a month to month basis.
- The deposit payable in terms of the SAT was agreed to be £750.
- On 24 August 2015 the Applicants paid by bank transfer a sum of £1500, being the deposit together with the first months rent of £750, to the nominated bank account of the First Respondent's Letting Agent.
- At the outset of the SAT the Applicants communicated with a Letting Agent for the First Respondent relative to viewings of the Property and the SAT.
- Thereafter the Applicants dealt with the Second Respondent on behalf of the First Respondent.

- vi. The Second Respondent was the First Respondent's agent.
- vii. Ongoing rent was paid into a different bank account to that which the deposit and first months rent was paid into.
- viii. The Applicants did not receive a written receipt for the deposit paid. Receipt of the funds is acknowledged in the email of 28 August 2015 from Jacqui Lamb of the First Respondent's Letting Agent to the First Applicant and the First Respondent.
- ix. The Applicants assumed the deposit had been paid into an approved scheme particularly having regard to Clause 6 of the SAT.
- x. The Applicants have checked with the three approved deposit schemes in Scotland. None of them have any record of the deposit.
- xi. The First Respondent is a psychiatrist, now in New Zealand.
- xii. Despite their efforts and dialogue with the Respondents subsequent to their removal from the Property, the Applicants have had no meaningful response from the First Respondent with regard to the return of the deposit which remains unpaid.
- xiii. The Applicants vacated the Property in April 2024.

Reasons for Decision

The Respondents did not submit any representations to the Tribunal and did not attend the CMD. The factual background narrated by the Applicants within the application papers and orally at the CMD was not challenged and was accepted by the Tribunal.

The First Respondent leased the Property to the Applicants. The Second Respondent acted only as the First Respondent's agent.

Notwithstanding the terms of Clause 6 of the SAT the deposit was not timeously lodged with the scheme administrator of an approved scheme in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Regulations").

The deposit was unprotected for the entire duration of the SAT being a period of approximately 8 years and 8 months.

As a commercial landlord, the First Respondent ought to have been aware of the Regulations and the obligations arising in terms of them.

Even after the SAT had ended the First Respondent had the opportunity to lodge the deposit into an approved scheme. He failed or refused to do so.

The deposit has not been returned to the Applicants and the First Respondent's conduct has deprived the Applicants of the opportunity to claim the deposit under the adjudication process operated by such approved schemes.

The First Respondent is due to repay to the Applicants the deposit of £750.

Decision

The First Respondent is ordered to pay to the Applicants a sum of £750.

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.Buchanan

Legal Member/Chair

30 October 2024
Date