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 (1) of the Private Housing (Tenancies) (Scotland) Act 2016 (Act)

Chamber Ref: FTS/HPC/CV/24/2070

Re: Property at 58 Glen Luce Terrace, East Kilbride, G74 1DT ("the Property")

Parties:

Ms Jackie McKenzie, 117 Laurel Drive, East Kilbride, G75 9JG ("the Applicant")

Mr Anthony Gill, 1 Brendon Avenue, East Kilbride, G75 9GT ("the Respondent")

Tribunal Members:

Alan Strain (Legal Member) and Angus Lamont (Ordinary Member)

Decision
The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment be granted in the sum of £400.

Background

This is an application under Rule 111 and section 71(1) of the Act for recovery of a deposit of £400 and compensation in respect of the Respondent's disposal of a fridge, divan and sofa owned by the Applicant following termination of the tenancy said to be worth £1,271.

The Tribunal had regard to the following documents:

1. Application received 3 May 2024;
2. Tenancy Agreement commencing 25 March 2021;
3. Correspondence between the Parties confirming tenancy end date and non-return of deposit;
4. text messages, a payment summary, a fridge receipt, an invoice from AO, a number of e-mails from the police, screenshots, emails re items of property, emails from tenancy deposit schemes, emails between the parties, an inventory screenshot, deposit receipt and receipts for a suite ,a divan and a fridge;

5. Written Representations from Respondent;
6. Email from Ashley Degning;
7. CMD Note and Direction dated 20 December 2024;
8. Written Representations from Applicant's Representative.

Hearing

Preliminary Matters

The case called for a Hearing by Webex videoconference on 9 July 2025. The Applicant participated and was represented by Mr Winterbottom and Ms Khali of Strathclyde University Law Centre. The Respondent participated and represented himself.

The Tribunal ran through the procedure to be followed with the Parties and also identified the following agreed facts:

1. The Respondent let the Property to the Applicant from 25 March 2021 until the termination of the tenancy following the Applicant's email giving notice dated 31 January 2024;

2. The Applicant paid the Respondent a deposit of £400 at commencement of the lease;

3. The deposit was not returned by the Respondent;

4. The deposit was not protected in one of the three deposit protection schemes by the Respondent.

The Tribunal identified the issues for determination as follows:

1. Whether or not the Applicant was entitled to repayment of her deposit;

2. Whether or not the Applicant was entitled to compensation for the Respondent's disposal of her fridge, divan and sofa and, if so, what amount should be awarded.

Evidence

The Tribunal heard evidence from both Parties, Mr Mark Woods and Ms Nikki Woods for the Applicant and Ms Ashley Degning for the Respondent.

In so far as relevant to this case the evidence was as follows:

Applicant's possessions

The Applicant spoke to the items of furniture and their value. The documents provided showed the original cost or replacement cost of the items.

She also spoke to the circumstances around the termination of the tenancy. She had given notice by email of 31 January 2024 and stated in that email that she would arrange to remove her possessions from the Property by 24 February 2024. Relations had subsequently broken down with the Respondent and she had reported him to the Police. Both she and her daughter had attempted to agree with the Respondent to uplift the 3 items at 9.30am on 24 February. They could not do so as the Respondent had changed the locks, had a new tenant in the Property and had blocked any communication with them. She referred to the email and text exchange with the Respondent and police.

The reason she could not collect the items before then was that she had arranged with her son to hire a van and move the items. This was the earliest this could be done.

Ms Woods corroborated the email exchange and also spoke to the email communications she had attempted to have with the Respondent. This comprised emails of 20, 13 and 9 February 2024. She spoke to the Respondent having blocked her and not responding to her emails.

Mr Woods confirmed that he had arranged to hire a van and to uplift the items on 24 February 2024. This was cancelled when the Respondent had not agreed to uplift on that date and to arrange access to the Property.

The Respondent's evidence was that he considered the lease to have ended immediately on 31 January 2024. He changed the locks in the Property due to the number of tradespeople who had access/keys to the Property. He accepted that he had a new tenant in place by 15 February 2024.He had ceased all communication with the Respondent following advice from the Police. He thought the Police had told the Applicant that she could uplift her remaining property and he would allow access for her to do so. He would arrange for his wife to be present rather than himself.

He also arranged for his new tenant, Ms Degning to be present on 24 February 2024 to allow access. Ms Degning confirmed this in her evidence.

The Police email of 9 February 2024 to the Applicant formed the basis of the Respondent's evidence that he agreed to access. This email did not state that access would be facilitated on 24 February nor did it state his new tenant would be present to permit access.

Ms Degning confirmed that after the Applicant had not attended to uplift her property it was put in the garden and covered. They were subsequently removed.

The deposit

The Respondent's position was that he had retained the deposit due to 2 months' rent arrears on the Property at conclusion of the lease. He accepted that he had repaid the last 2 months' rent at the Applicant's request.

He was asked why he had repaid the rent on request and explained that he did so because the Applicant had asked him. He considered that this meant there were 2

months' unpaid rent at conclusion of the lease. The last rent the Applicant had paid (according to the Respondent) was in November 2023.

The Applicant did not accept that there were any rent arrears. The Respondent had repaid the rent to her because she wasn't living in the Property. Her explanation was that she couldn't live in the Property. The Property had been undergoing repair and refurbishment following water damage.

Submissions

Both Parties made submissions.

The Applicant submitted that she was entitled to return of her deposit as she was not in rent arrears at the end of the tenancy and that the Respondent had not permitted access to her possessions and unreasonably disposed of them. She should be compensated for this.

The Respondent submitted that the Applicant was in 2 months rent arrears at the end of the tenancy and was not entitled to return of her deposit.

N so far as her possessions were concerned she did not turn up on 24 February after he had made arrangements for Ms Degning to facilitate access. He was not responsible for what happened to the possessions thereafter.

Decision and Reasons

The Tribunal considered the documentary evidence it had received, the witness evidence and the submissions made. In so far as material the Tribunal made the following findings in fact:

1. The Parties let the subjects under a PRTA commencing 25 March 2021;
2. The Applicant paid a deposit of £400 at commencement of the tenancy agreement;
3. The Applicant gave notice to terminate the tenancy by email of 31 January 2024 and the deposit has never been repaid to her;
4. The Respondent refused to repay the deposit on the basis that he considered the Applicant was in 2 months' rent arrears;
5. The Applicant was not in arrears of rent at the end of the tenancy;
6. The Applicant's Property was not returned to her at the end of the tenancy;
7. The Applicant did not attend the Property on 24 February 2024 to uplift her Property;
8. The Respondent did not communicate his agreement to allow access to uplift the Applicant's Property on 24 February 2024;
9. The email from the Police to the Applicant on 9 February 2024 did not state that access would be facilitated on 24 February 2024;
10. The Applicant's property has been disposed of.

The deposit

The Tribunal considered the Parties' evidence and concluded that as the Respondent had repaid the rent to the Applicant for the last 2 months' rent his actions were consistent with there being no rent due. The Tribunal considered that the Respondent's actions in returning the rent were wholly inconsistent with his explanation that rent was due.

Accordingly the Tribunal found that there were no rent arrears at the conclusion of the lease and the Respondent had unjustifiably withheld the deposit. The Applicant was due the return of the deposit and the Tribunal granted an order to that effect.

The Applicant's possessions

The Tribunal considered it unfortunate that there had been such a breakdown in communications between the Parties.

The Respondent had misconstrued the Applicant's email of 31 December 2024 as immediate termination of the tenancy. The email clearly states the Applicant is giving "notice" and that her possessions will be out of the Property by 24 February 2024. The Tribunal was at a loss to understand how the Respondent could have considered this to be immediate termination.

The tone of the email exchanges between the Parties that followed were clearly aggressive.

The emails from the Applicant and her daughter, Ms Woods, clearly stated as late as 20 February 2024 that the Applicant would be uplifting her possessions on 24 February 2024. The email from the Police to the Applicant on 9 February 2024 clearly intimates that the Respondent will allow access although it does not specify a date.

The Applicant did not uplift her possessions on 24 February and they were disposed of by Ms Degning.

The Tribunal considered both Parties to be at fault in this matter. The Respondent had communicated that he would permit entry through the Police email of 9 February 2024 but had not communicated the date or how access would be facilitated.

The Applicant and her daughter have both communicated stating as recently as 20 February 2024 that the possessions would be uplifted on 24 February 2024. They were not. It was reasonable to conclude the possessions to have been abandoned and to dispose of them.

In the circumstances the Tribunal find that no award should be made.

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.

Alan Strain

11 July 2025

Legal Member/Chair **Date**