



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 14 of the Housing (Scotland)
Act 2016**

Chamber Ref: FTS/HPC/CV/19/0766

Re: Property at 25 Glebe Street, Inverness, IV1 1RF (“the Property”)

Parties:

Ms Denise Amaral, 8 Balachlan Drive, Inverness, IV3 8LW (“the Applicant”)

**Ms Emma Williamson, 56 St Mildreds Road, London, SE12 0RF (“the
Respondent”)**

Tribunal Members:

Helen Forbes (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for payment should be made in the sum of
£700 in favour of the Applicant**

Background

1. This is an application under Rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Rules”). The application, dated 6th March 2019 concerns a sum of £700 paid by the Applicant to the Respondent on 31st October 2018, in anticipation of a private residential tenancy to be put in place between the parties in respect of the Property. The Property was, at that time, let to the Applicant’s son, and the agreement was that the Applicant would take over the tenancy when her son left the Property. Along with the application, the Applicant’s representative lodged a letter from the Applicant to the Respondent dated 21st January 2019, a Bank of Scotland receipt for the sum in question, a handwritten note with the Respondent’s bank details, and a note of text messages between the parties dated 20th December 2018.

2. The Applicant's son vacated the Property later than originally agreed. The Respondent then expected the Applicant to take up the tenancy on 16th December 2018, but on that date, the Applicant informed the Respondent that she no longer wished to take up the tenancy. The Respondent refused to return the deposit.
3. The Respondent lodged written representations on 1st November 2019, together with a screenshot of supporting text conversation.
4. The case called for a Case Management Discussion ("CMD") on 8th November 2019 at the Mercure Hotel, Church Street, Inverness. The Applicant was present, with her husband, Mr Fernando Amaral, as a Supporter. The Applicant was represented by Ms Estelle Kerr of the Inverness Citizens Advice Bureau ("CAB"). The Respondent was in attendance by telephone conference.
5. There was discussion about whether the case had been raised under the correct rule. The Respondent had referred to the sum as a 'holding deposit' upon refusal to return it. The Applicant had implied in a text message that the deposit was made in relation to work she anticipated would be carried out to the Property before the tenancy commenced. Following discussion, it became clear that there was agreement between the parties that the sum of £700 was not intended to be a holding deposit or made in anticipation of work being carried out. It was agreed that this was a tenancy deposit for a tenancy that was anticipated to commence shortly after the sum was paid. There was agreement that the deposit was taken 'in relation to a private residential tenancy', albeit the tenancy never came into being, and that the application had been made under the correct rule.
6. The Respondent claimed that she was significantly out of pocket following the refusal of the Applicant to take up the tenancy. In anticipation of the tenancy commencing, the Respondent had not marketed the Property for let. This meant the Property was empty for 42 days, incurring costs of £724.93. Her position was that it could have been let to someone else had the Applicant informed her sooner that she was not moving in. As it was, the Applicant only informed her on the day intended for entry that she no longer wished to move in.
7. The CMD was continued to allow the Respondent to take advice on her position that she was entitled to withhold the deposit in circumstances where the Applicant's withdrawal from the verbal agreement between the parties caused her loss, in circumstances where no private residential tenancy agreement was entered into. Parties were asked to lodge written representations or submissions no later than 7 days before the CMD.
8. On 21st February 2020, the Respondent lodged written representations.

The Case Management Discussion

9. A further CMD took place on 28th February 2020 at Jury's Inn, Millburn Road, Inverness. The Applicant was present, with her husband, Mr Fernando Amaral, as a Supporter. The Applicant was represented by Ms Estelle Kerr of the Inverness Citizens Advice Bureau ("CAB"). The Respondent was in attendance by telephone conference.
10. The Respondent referred to her written representations. It was her position that a verbal tenancy agreement had been created between the parties. Although no rent had been paid, she was entitled to retain the deposit in lieu of rent over the period that the Property was empty, until she was able to find another tenant.
11. On behalf of the Applicant, Ms Kerr said advice had been sought from Shelter Scotland. She submitted that no tenancy had been created. There was no occupancy and no rent paid. There was no tenancy agreement. A tenancy deposit would normally cover utilities, unpaid rent and damages arising from a tenancy agreement. In this case, there was agreement to enter into a tenancy, but it did not happen. The client changed her mind.
12. In response, the Respondent said that she kept the deposit because the Applicant did not move in. As a result of their verbal tenancy agreement, rent was due. It was not paid. She was entitled to keep the money.
13. Responding to questions from the Tribunal as to whether the provisions of section 1(1) of the Private Housing (Tenancies) (Scotland) Act 2016 had been complied with, and particularly the requirement at section 1(1)(b) that the tenant occupies the property ... as their only or principal home, the Respondent said that there was a verbal agreement, and she had stuck to her side of the agreement and acted in good faith.
14. The Tribunal was mindful of the fact that the Respondent was not legally represented and that she may wish to take further legal advice on the advice which the Applicant had received from Shelter Scotland, and consider being legally represented at a hearing. The Tribunal asked parties for their submissions on whether matters should be continued to a hearing. There was discussion on the fact that the Respondent does not live locally and it would be difficult for her to attend a hearing. The Tribunal pointed out that she did not have to attend in person; she could be represented and/or appear by telephone conference again.
15. The Respondent considered matters and said that she did not wish to continue matters to a hearing and would prefer a decision be reached at today's CMD.
16. The Tribunal noted that the facts were agreed and considered that it had enough information before it to reach a decision at the CMD.

Findings in Fact

17.

- (i) On 31st October 2018, in anticipation of a private residential tenancy being put in place between the parties in respect of the Property, the sum of £700 was paid by the Applicant to the Respondent as a tenancy deposit.
- (ii) The creation of the tenancy was delayed due to the previous tenant not leaving on the date on which he was originally supposed to leave.
- (iii) The Applicant agreed to enter into a tenancy agreement to commence on 16th December 2018.
- (iv) On 16th December 2018, the Applicant decided against taking on the tenancy of the Property and requested the return of the tenancy deposit.
- (v) The Respondent refused to return the tenancy deposit.
- (vi) No private residential tenancy agreement was entered into between the parties.
- (vii) The Respondent was not entitled to withhold the tenancy deposit.

Reasons for Decision

18. It is clear that no private residential tenancy agreement was entered into between the parties. There was verbal agreement to enter into a tenancy agreement, but the tenancy agreement did not transpire, as the Applicant changed her mind before it could be put in place. There was a notional start date, but the Applicant did not occupy the Property as required by the 2016 Act. In the circumstances, given that there was no tenancy agreement, the Respondent is not entitled to withhold the sum taken as a tenancy deposit in anticipation of a tenancy that did not commence.

Decision

19. An order for payment is granted in favour of the Applicant in the sum of £700.

Right of Appeal

20. 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.

Helen Forbes

Legal Member/Chair

Date: 28th February 2020