



**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/19/1733

Re: Property at 23 Benbain Place, Irvine, KA11 1RG (“the Property”)

Parties:

Mr James Agnew, 7 Glenlyon Grove, Irvine, KA11 1RN (“the Applicant”)

**Miss Danielle McLaughlan, 3 Church Place, Ardrossan, Ayrshire, KA22 8DS
 (“the Respondent”)**

Tribunal Members:

Alison Kelly (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment in the amount of £1500.81 should be made.

Background

1. The case had been through a series of Case Management Discussions, and several Directions had been issued.
2. The issues in dispute were:
 - a) The level of rent arrears;
 - b) The question of damage done by the Respondent.
3. At the Case Management Discussion on 3rd December 2019, the Applicant said that he had not put the deposit of £500 paid by the Respondent in to a Tenancy Deposit Scheme.
4. The Respondent emailed the Tribunal on 7th February 2020 seeking an adjournment on medical grounds. She was asked to produce some medical

evidence to support her request, but she did not do so. Accordingly the request for an adjournment could not be considered. She was notified by email of this on 2nd March 2020.

The Hearing

5. The Applicant appeared personally, and was accompanied by his Representative, Bonnie Welsh. The Respondent did not appear. The Tribunal waited for 10 minutes, and, being satisfied that the Respondent was aware of the Hearing given her request for an adjournment, they commenced the hearing at 2.10 pm.
6. The Chairperson introduced herself and the Housing member, Gerard Darroch. She explained the purpose of the Hearing. She confirmed the issues in dispute and stated that the Tribunal would deal with the second issue first.
7. The Chairperson asked the Applicant to look at Clause 3 of the Lease Agreement between the parties, which was dated 25th May 2016, and was signed by them both. The Chairperson read the Clause out, and drew the Applicant's attention to his contractual obligation to place the deposit with Safe Deposit Scotland Limited. She pointed out that the clause stated "Any dispute will be dealt with by Safe Deposit Scotland Ltd." The Chairperson said that it was the view of the Tribunal that they did not have jurisdiction to deal with the question of damages as the Applicant had contracted with the Respondent that these matters would be dealt with by Safe Deposit Scotland Limited. She also pointed out that the Applicant was in breach of that term of the contract and therefor it would be inequitable for him to profit from it. The Applicant accepted the position and said that he was not aware of the obligation at the time, but he now places deposits in to an appropriate scheme.
8. The Chairperson said that as far as the Tribunal was concerned the amount calculated to be due by way of arrears was correct, and that as the Respondent was not there to provide any evidence to the contrary the Tribunal would accept that figure as being due. However, the Tribunal decided that the sum of £500, which was the deposit amount, should be deducted, as the Applicant had no right to retain it towards damage.

Findings In Fact

1. The parties entered in to a tenancy agreement for the property;
2. The rent was payable at £500 per month;
3. At the termination of the tenancy the respondent owed £2000.81;
4. The deposit of £500 had not been placed in a tenancy deposit scheme and therefor fell to be deducted from the sum due.

Reasons For Decision

At the termination of the tenancy the respondent owed £2000.81 and the deposit of £500 had not been placed in a tenancy deposit scheme and therefor fell to be deducted from the sum due.

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.

Alison Kelly

Legal Member/Chair



Date

6/3/2020