



**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/20/2260

Re: Property at 66B Eskside West, Musselburgh, EH21 6RA (“the Property”)

Parties:

**Miss Megan Stewart, Mr Jordan Gilmour, 19/3 Westburn Grove, Wester Hailes,
EH14 2SA; 19/3 Westburn Grove, Wester Hailes, EH14 2SA (“the Applicant”)**

**Miss Morgan Morrison, 16a Stoneybank Gardens North, Musselburgh, EH21
6NB (“the Respondent”)**

Tribunal Members:

Alison Kelly (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for payment in the amount of £550 should
be made.**

Background

The Applicants lodged an application under Rule 111 of the First-tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017, (“the Rules”) seeking payment from the Respondent of the deposit which they had paid at the outset of the tenancy.

The Applicants lodged:-

1. Copy of the Tenancy Agreement.
2. A faster payment receipt, showing payment of the deposit.

Service of the application was affected on the Respondent by Sheriff Officers on the 16th December 2020.

The Applicants raised a separate action in respect of the Tenancy Deposit not having been lodged in an approved scheme, Reference FTS/HPC/PR/20/2021.

Case Management Discussion

The Case Management Discussion (“CMD”) took place by teleconference on 5th February 2021. Both Applicants joined the conference, as did the Respondent.

The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules, and confirmed that the parties understood.

The Chairperson ascertained from the parties that the following facts were agreed:

1. The parties entered in to a tenancy agreement in relation to the property, commencing 14th June 2019;
2. The tenancy was terminated on 13th August 2020;
3. A deposit of £550 was paid by the Applicants to the respondent;
4. The Respondent did not lodge the deposit in an approved scheme in terms of the Tenancy Deposit (Scotland) Regulations 2011 (“TDS”);
5. The Respondent did not return the deposit to the Applicants at the end of the tenancy.

The Chairperson asked the Respondent to confirm why she had not lodged the deposit in an approved scheme. She said that she had been a first time landlord, she had never rented a property out before. She did not know that landlords for private lets had to put the deposit in an approved scheme. She thought that depositing it in a bank account and keeping it safe was appropriate. She did not learn about the requirement until after the tenancy had commenced. She registered as a landlord, but with the wrong local authority. By the time this was rectified she knew that the Applicants were intending to leave as she had been asked for a reference for them by a housing association. As they were leaving she didn’t deem it necessary to lodge the deposit. She also said that she had attended the property during the course of the tenancy because the washing machine was broken. She said that the house was not clean and she did not think the Respondents were treating it with respect. She had not returned the deposit at the end of the tenancy because of this.

Mr Gilmour said that the property had not been unclean. The Respondent had said that she would carry out monthly inspections, but she never did.

Findings in Fact

1. The parties entered in to a tenancy agreement in relation to the property, commencing 14th June 2019;
2. The tenancy was terminated on 13th August 2020;
3. A deposit of £550 was paid by the Applicants to the respondent;
4. The Respondent did not lodge the deposit in an approved scheme in terms of the TDS;
5. The Respondent did not return the deposit at the end of the tenancy.

Reasons for Decision

The deposit taken should have been deposited in terms of Regulation 3 of the TDS. The point of the TDS is to provide a mechanism for a fair resolution of disputes at the end of the tenancy. In the circumstances the Respondent is not entitled to retain the deposit.

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

5th February 2021

Legal Member/Chair

Date