

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 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/CV/19/2743

**Re: Property at 4 Rochsoles Crescent, Rochsoles, Airdrie, ML6 6TE (“the
Property”)**

Parties:

**Miss Jillian Binnie, 3 Woodburn Ave, Cairnhill, Airdrie, ML6 9ED (“the
Applicant”)**

Mr Scott Bruce, 11 Golfhill Quadrant, Airdrie, ML6 6SU (“the Respondent”)

Tribunal Members:

George Clark (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the application should be granted without a Hearing
and made an Order for Payment by the Respondent to the Applicant of the
sum of £360.**

Background

By application, dated 2 September 2019, the Applicant sought an Order for Payment against the Respondent in the sum of £460, being the deposit that she had paid to the Respondent at the outset of her tenancy of the Property. The application was accompanied by a copy of a Tenancy Agreement between the Parties which made provision for a deposit of £460.

The Applicant provided the Tribunal with copies of a letter from the Respondent dated 5 July 2019 and a cheque, dated 9 July 2019 and payable to the Applicant, for £100. The letter listed 12 items in respect of which the Respondent had retained the balance of the deposit, including alleged failure on the part of the Applicant to provide adequate notice of termination of the lease, failure to remove 7 bookcases, a folding table, file binders and trainers, mirrors, clothes and two sofas, failure to ensure the outside bins were empty, repairs to Sky tv and telephone line cables, missing light bulbs. A carpet had had to be replaced and the Property fully painted. The letter also stated that the Applicant had not left the Property in the same manner or cleanliness as she had received it.

On 26 September 2019, the Tribunal advised the Parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written representations by 17 October 2019.

In his written representations, the Respondent stated that he stood by his list of 12 items and provided a number of photographs. He also advised that his sister had offered to pay the full deposit back to the Applicant.

Case Management Discussion

A Case Management Discussion was held at Glasgow Tribunals Centre, 20 York Street, Glasgow on the morning of 31 October 2019. The Applicant had advised the Tribunal on the previous day that she was unwell and would not be attending, but that she believed she had provided sufficient information for the Tribunal to make an informed decision in her absence. The Respondent was represented by his sister, Mrs Gail O'Donnell, who said that the Respondent wanted the matter brought to a close and that he would repay the full deposit to the Applicant. A new tenant had assisted in removing the items left behind by the Applicant.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required and that it would determine the application without a Hearing.

Regulation 3(1) of The Tenancy Deposit Schemes (Scotland) Regulations 2011 states that a landlord who has received a tenancy deposit must, within 30 working days of the beginning of the tenancy, pay the deposit to the scheme administrator of an approved scheme.

The Tribunal was of the view that, in the absence of evidence as to the condition of the Property at the start of the tenancy, it would not be possible to determine whether the Applicant had left it in a reasonable condition. The Tenancy Agreement did not include any provisions in relation to the giving of notice by the tenant, so no claim could be upheld in relation to the allegation that she had left without warning. The Tribunal could not uphold any claim in respect of painting of the Property or the replacement of a carpet, as that took no account of fair wear and tear, for which the Respondent would be responsible. There was also no evidence of actual loss incurred by the Respondent in removal of items left behind by the Applicant. The Tribunal noted, however, that the Respondent wished the matter brought to a close, so was willing to refund the whole deposit and the Tribunal was content to make an Order on this basis.

The Tribunal noted that a cheque for £100 had already been sent to the Applicant and that, whilst it remained uncashed, it was still in date. Accordingly, the Order for Payment would be for the balance of £360.

Decision

The Tribunal determined that the application should be granted without a Hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £360.

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.

George Clark

Legal Member/Chair

31 October 2019

Date