



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 (“the 2014 Act”) and Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/PR/19/3821

**Re: Property at 17 Park Manor, Crieff, PH7 4LJ
 (“the Property”)**

Parties:

Ms Ruth Pringle, St Ninian’s Lodge, Lodge Street, Crieff, PH7 4DW (“the Applicant”)

**Mr Jonn Burke, present address unknown, registered proprietor of 17 Park Manor, Crieff, PH7 4LJ
 (“the Respondent”)**

Tribunal Members:

Ms. Susanne L M Tanner Q.C. (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that the Respondent should pay to the Applicants the sum of FIVE HUNDRED AND SIXTY SIX POUNDS AND THIRTEEN PENCE (£566.13) STERLING; and made an Order for Payment in respect of the said sum.

1. Procedural background

1.1. The Applicant made an Application to the tribunal dated 26 December 2019 in terms of Section 16 of the 2014 Act and Rule 103, later amended to Rule 111,

of the 2017 Rules, seeking an order for payment against the Respondent in the sum of £667.70, comprising £450.00 in respect of refund of a deposit payment paid to the Respondent and £207.70 in respect of overpaid rent for the period after the tenancy ended on 12 April 2019.

1.2. The Application documentation submitted by the Applicant comprised:

- 1.2.1. A copy of a Short Assured Tenancy Agreement between the Applicant and another tenant and the Respondent and two others for the Property dated 16 March 2015;
- 1.2.2. An AT5 form dated 24 February 2015;
- 1.2.3. Documentation relating to a Rent Bond Guarantee Scheme with Perth and Kinross Council;
- 1.2.4. A Key retention agreement for the Respondent for the Property;
- 1.2.5. A Notice to Quit from Irving Geddes, Solicitors on behalf of the Respondent and two other landlords to the Applicant and another tenant dated 25 February 2019;
- 1.3. A receipt for a debit card payment for £207.70 to Perth and Kinross Council dated 5 August 2019;
- 1.4. A Benefits Decision notice dated 10 June 2019;
- 1.5. Confirmation of a standing order from the Applicant to the First Respondent dated 19 March 2015 for payments of £450.00 per calendar month for 17 Park Manor from 21 April 2015 until further notice;
- 1.6. The tribunal requested further information from the Applicant on 12 December 2019 and on 7 January 2020.
- 1.7. On 15 January 2020, the Applicant provided further information and produced a screen shot showing text messages bearing to be between her and the First Respondent in respect of his refusal to return her deposit due to work required in the Property.
- 1.8. On 21 January 2020, the tribunal requested further information from the Applicant.

- 1.9. On 7 February 2020, the Applicant confirmed that she wished her original application to be amended to show that it is being raised under Rule 111 of the 2017 Rules. The tribunal consented to the Application to be so amended.
- 1.10. On 13 February 2020, the Application was accepted for determination by the tribunal.
- 1.11. On 25 February 2019, parties were notified of the date, time and place of a Case Management Discussion ("CMD") on 30 March 2020 at 1130h at Wallace House, Maxwell Place, Stirling, FK8 1JU. The Respondent was invited to submit written representations to the Application by 17 March 2020.
- 1.12. Service on the Respondent by Sheriff Officers was unsuccessful. Service by advertisement took place on the tribunal's website.
- 1.13. No written representations were submitted by the Respondent.
- 1.14. The CMD was postponed due to the Covid-19 pandemic. The tribunal notified parties of the date, time and place of a Case Management Discussion by teleconference to take place on 29 July 2020 at 1400h. The Respondent did not respond to the service by Advertisement.
- 1.15. A CMD teleconference took place on 29 July 2020 at 1400h. The Applicant attended the CMD teleconference. The Respondent did not attend the CMD teleconference. The tribunal was satisfied in terms of Rule 2019 of the 2017 Rules that the requirements of Rule 24(1) regarding the giving of notice of a hearing had been duly complied with, proceeded with the application upon the representations of the Applicant and all the material before it. Reference is made to the Notes on the CMD which were prepared by the Legal Member and sent to the Applicant and made available to the Respondent via Service by Advertisement.
- 1.16. The CMD was adjourned to a date to be notified to allow the Applicant to consider whether to amend the designation of the Respondent or to add another Respondent and to provide further information relative to the head of claim relating to the tenancy deposit.
- 1.17. On 29 July 2020, Directions were issued by the tribunal.
- 1.18. On 10 September 2020, the Applicant complied with the tribunal's Directions and produced Title Deeds for the Property, a screenshot of correspondence with Perth & Kinross Council relative to deposit and a request to amend the Application to proceed only against the Respondent as an

individual, as registered proprietor of the Property, whose current whereabouts are unknown.

1.19. A CMD teleconference was fixed for 16 September 2020. The Applicant was notified. The Respondent was served by Service by Advertisement from 12 August 2020 to 16 September 2020.

1.20. The Respondent did not contact the tribunal.

2. CMD: 16 September 2020, 1000h - teleconference

2.1. The Applicant attended the CMD teleconference.

2.2. The Respondent did not attend the CMD teleconference. The tribunal was satisfied in terms of Rule 2019 of the 2017 Rules that the requirements of Rule 24(1) regarding the giving of notice of a hearing had been duly complied with, proceeded with the application upon the representations of the Applicant and all the material before it.

2.3. Claim for overpaid rent

2.4. The claim for overpaid rent had been discussed at the previous CMD and the Applicant had amended that amount sought for this head of claim to **£116.13** for the period from 13 to 20 April 2019, which is a pro rata figure based on £450.00 per calendar month, payable on 21st of March 2019 until the end of the lease on 12th April 2019. She has produced evidence of payment of the sum to the Respondent.

2.5. Deposit

2.6. The Applicant produced additional information in relation to the tenancy deposit. She stated that Perth & Kinross Council had confirmed that she had never used the deposit bond scheme and referred to the confirmation from Rachel Howie on 29 July 2020. She stated that she recalled having enquired about the scheme and having received information but that she had never used the scheme, which had now been confirmed by the Council.

2.7. The Applicant stated that she does not have proof of the method of payment of the deposit to the Respondent but that she is sure that she paid it. She remembers making a decision not to apply to the bond scheme because she wanted to have deposit money returned at the end so that she would have it for her next tenancy. For proof that a deposit was paid, she is relying on the terms of the lease, Section 6, which provides for a deposit of £450.00, as well

as the text correspondence from the Respondent on 26 November 2019, in which he stated that he was not returning her deposit because he had had to spend it on property repairs after the end of the tenancy. She stated that during the tenancy she had had a fairly good text relationship with the landlord. She stated that they shared the same solicitor in Crieff. When she was in their office on another matter on 26 November 2019 she asked if they knew of the Respondent's address or had a way of reaching him as she still had to get her deposit back. Later on 26 November she received the text from the Respondent at 13.27h stating that he was not returning her deposit because of works of £2500.00 required to bring the Property back to the same standard that it was in when she moved in.

3. Findings-in-Fact

- 3.1. The Applicant and Respondent entered into a Short Assured Tenancy agreement in respect of the Property.
- 3.2. Rent was payable at the rate of £450.00 per calendar month.
- 3.3. A deposit of £450.00 was paid by the Applicant to the Respondent at or about the start of the tenancy.
- 3.4. The Respondent did not pay the Applicant's deposit into a tenancy deposit protection scheme.
- 3.5. The tenancy ended on 12 April 2019.
- 3.6. The Applicant overpaid rent to the Respondent in the sum of £116.13 for the period from 13 to 20 April 2019.
- 3.7. The Respondent has retained overpaid rent in the sum of £116.13.
- 3.8. The Respondent retained the Applicant's deposit of £450.00 stating that it was to meet the costs of repairs to the Property after the tenancy had ended.
- 3.9. Because the deposit was not lodged by the Respondent with a statutory deposit protection scheme, the Applicant lost the opportunity to challenge the proposed retention of her deposit.
- 3.10. The Applicant has repeatedly requested return of her overpaid rent and deposit from the Respondent and he has failed to make payment to her.

4. Discussion

- 4.1. The tribunal was satisfied on the balance of probabilities that the Applicant overpaid rent in the sum of £116.13 for the period from 13 to 20 April 2019, which is a pro rata figure based on £450.00 per calendar month, payable on 21st of March 2019 until the end of the lease on 12th April 2019.
- 4.2. The tribunal was satisfied on the balance of probabilities that the Applicant paid a deposit to the Respondent as provided for in the tenancy agreement. The tribunal had regard to the Respondent's message to the Applicant dated 26 November 2019 in which he notified her that he was retaining her entire deposit to meet the costs of repairs to the Property in the sum of £2500.00. The deposit should have been lodged by the Respondent in a statutory deposit protection scheme and because it was not, the only method which the Applicant had to seek return of the deposit was with the Respondent, and when he refused to make payment, by making the Application to the tribunal. The Respondent has not engaged with the tribunal process or produced any defence to the Application. The tribunal was therefore satisfied on the balance of probabilities that the Respondent had retained £450.00 of the Applicant's tenancy deposit and that it should be returned to her.
- 4.3. As the tribunal was satisfied that the Respondent owes the said sums to the Applicant, the tribunal made an Order for Payment in the sum of £566.13.

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.

Susanne Tanner

**Susanne L M Tanner Q.C.
Legal Member/Chair**

16 September 2020