



Dismissal of Application issued by the First-tier Tribunal for Scotland

Chamber Ref: FTS/HPC/CV/19/3598

At Glasgow on 26 February 2020

Re: Property at 24 Strawberry Bank Parade, Aberdeen, Aberdeenshire AB11 6US (“the Property”)

Parties:

Mr Abdulazim Ali, residing at Buezeveen – 148, 9407 HD Assen, The Netherlands
(“the Applicant”)

Francis George Colville and Flora Colville, residing together at Loran, Woodhead,
Turriff, Aberdeenshire AB53 8LT
(“the Respondents”)

The First-tier Tribunal for Scotland (Housing and Property Chamber) dismisses the application.

This Order is warrant for all lawful execution thereon.

Paul Doyle

Date: 26 February 2020

Legal Member:

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**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

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Parties:

Mr Abdulazim Ali, residing at Buezeveen – 148, 9407 HD Assen, The Netherlands
("the Applicant")

Francis George Colville and Flora Colville, residing together at Loran, Woodhead,
Turriff, Aberdeenshire AB53 8LT
("the Respondents")

Tribunal Members:

Paul Doyle (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") dismisses the application and determines that no order for payment should be made.

Background

The Applicant sought an order for payment. The Applicant had lodged with the Tribunal Form F Dated 9 November 2019. The documents produced were a Tenancy Agreement, a tenancy deposit certificate and a notice under reg 42 of the Tenancy Deposit (Scotland) Regulations 2011. On 3 February 2020 the applicant submitted documents in response to directions following a case management discussion on 7 January 2020. On 25 February 2020 the applicant submitted further written representations. A copy title sheet was lodged with the Tribunal which shows that the respondents are the heritable proprietors of the Property.

Case Management Discussion

A case management discussion took place by telephone conference call with the Tribunal at 10.00am on 26 February 2020 at the Glasgow Tribunals Centre, 20 York street, Glasgow G2 8GT. The Applicant and both respondents participated in the conference call. All of the parties were unrepresented.

Findings in Fact

1. The respondents are the heritable proprietors of the property. On 28 November 2018 they leased the property to the applicant. The applicant occupied the property between 28 November 2018 and 1 July 2019.
2. The parties incorrectly used a form of tenancy entitled "Short assured Tenancy". All parties believed that the tenancy was for a fixed period of 6 months. The agreed rental was £600 per month. Before taking entry, the applicant paid a deposit of £600, which was placed on an approved tenancy deposit scheme.
3. The applicant lost his contract of employment in June 2019 and agreed with the Respondents that he would vacate the property on 1 July 2019. After the applicant vacated the property, a dispute arose between the applicant and the respondents about the tenancy deposit. That dispute was resolved by a tenancy deposit adjudicators decision dated 2 October 2019. That adjudicators decision awarded the respondents £532.33 of the deposit and released the balance of deposit to the applicant.
4. On 4 October 2019 the applicant applied to MyDeposits Scotland for a review of the adjudicator's decision dated 2 October 2019. On 21 October 2019 MyDeposits Scotland rejected the applicant's application for review.
5. At some point in the duration of the tenancy the applicant was told by a friend that his friend's accommodation in another area of Aberdeen (Rubislaw) was cheaper than the agreed rental of the property. The applicant did not look for alternative accommodation and is not aware of readily available alternative accommodation at a lower cost.
6. The applicant made preparations to move to the Netherlands, where his son lives, in June 2019. The applicant's son bought the applicant's flight ticket to Amsterdam and met him at the airport there on 1 July 2019. The applicant's son lent some money to the applicant when he arrived in Amsterdam. The cost of the flight ticket

and the sum handed to the applicant by his son amount to less than £450. The applicant has not repaid his son.

7. When the applicant was discussing terminating the tenancy with the respondent in June 2019 he sent a number of messages to the respondents which included

I appreciate your kind help and the nice treatment which you and your parents had provided me during my stay in the flat.

I appreciate your kind understanding

8. Since leaving the property the applicant has become increasingly distressed by the dispute about the tenancy deposit and by this application.

Reasons for the Decision

1. In his application the applicant seeks the following remedy

1. Pay back my £532.55, which is part of the flat deposit

2. Pay an additional amount of £1,000 on compensation for the caused financial difficulties, stress for my family, it was very difficult to find the truth.

2. At the case management discussion on 7 January 2020 the Tribunal recorded the applicant's representations and focused the applicant's claim into three headings

(i) The applicant believed he was locked into a 6-month contract and lost the opportunity to move to cheaper accommodation, being the lease of a room, at a rent of only £250 - £300 per month inclusive of utilities and any council tax

(ii) The applicant had to borrow £430 - £450 from his son to pay for his flight back to the Netherlands which he had intended to fund from the deposit. He has not repaid his son

(iii) The applicant has had to incur expense in numerous telephone calls about the situation including to Shelter and to the MP for Aberdeen

3. The applicant discussed his application and the heads of claim earlier identified at this case management discussion. He said that he was told by a friend that cheaper accommodation was available in the Rubislaw area of Aberdeen, but said, unequivocally, that he did not find alternative accommodation that he could move into. The applicant chose this property as a property he wanted to rent. He entered into a tenancy agreement and did not seek alternative accommodation. There is no reliable evidence of the availability or cost of alternative accommodation.

4. There is no reliable evidence to support the first head of claim. The appellant fails to establish that cheaper accommodation was available.

5. The applicant's son paid for his flight ticket to Amsterdam and handed some cash to the applicant at Amsterdam airport. The financial dealings between the applicant and his son have nothing to do with the contract between the applicant and the respondents.

6. The applicant argues that if the tenancy deposit had been handed to him on the day he vacated the property, then he would not have had to ask his son for money. The problem with that argument is that the expenditure on the plane ticket was met before the tenancy agreement terminated, and the exchange of cash predates any possible return of deposit money. The more fundamental problem with that argument is that the dispute about the deposit was determined by an independent adjudicator in line with the alternative dispute resolution provisions contained in the Tenancy Deposit (Scotland) Regulations 2011. The fact that the adjudicator's decision went against the applicant does not create a liability for damages, nor a right of relief, against the respondents.

7. The applicant dwells on the rent deposit adjudicator's decision and says that the whole process of terminating the lease and challenging the deposit dispute has caused

financial difficulties, stress for my family

8. The applicant cannot recover for any loss suffered by his family members. The applicant could recover for any loss he has suffered if he proves that the loss was caused directly by the respondents' actions or neglect. The applicant does not produce reliable evidence of loss caused by the respondents.

9. Even if the applicant established that the respondents' actions were wrong and had caused him loss, he would have to specify what that loss is. The applicant has failed to produce any reliable vouching of loss. In his written submissions and in his discussions at the CMD hearing the applicant candidly agreed that he has no vouching of loss. The most he could say at the CMD was that he had had to buy some telephone cards (at 10€ each) to pursue his claim.

10. It is the applicant's application. The applicant's submissions dwell on the history of dispute surrounding the tenancy deposit and the use of an incorrect form of tenancy agreement. The incorrect form of tenancy agreement has limited relevance because, as a matter of law, the tenancy agreement would be treated as a private residential tenancy in terms of the Private Housing (Tenancies)(Scotland) Act 2016. The dispute in relation to the tenancy deposit was finally determined when the

applicant's application for review in terms of part 6 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 was rejected.

11. The Tribunal determined to dismiss the application and makes no Order for payment

Decision

For the foregoing reasons, the Tribunal determined to dismiss the application.

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.

Paul Doyle

Legal Member



Date

26 February 2020