



**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/18/1675**

**Re: Property at 11 Wooden Linn, Kelso, TD5 8HY (“the Property”)**

**Parties:**

**Mrs Sarah Griggs, Meadow view, Crook Road, Kendal, LA8 9NG (“the Applicant”)**

**Mr Alistair Dodsworth, Mrs Danielle Dodsworth, 21 Inchmyre, Kelso, TD5 7LH (“the Respondents”)**

**Tribunal Members:**

**Lesley Ward (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the respondents shall make payment to the applicant of the sum of one thousand pounds (£1000).**

This is the second case management discussion ‘CMD’ in connection with an application in terms of rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, ‘the rules’ and s16 of the Housing (Scotland) Act 2014, ‘the Act’. A first CMD was adjourned to today to enable both parties to lodge copies of all correspondence from SafeDeposit Scotland.

Since the last CMD the applicant has lodged the following with the Tribunal on 19 December 2018:

1. Letter from SafeDeposit Scotland which appears undated but which refers to a ‘proposal for payment’ to which the respondents have until 14 June 2018 to respond to.
2. Text exchanges between the parties from 7 December 2018 until 3 July 2018.

The respondents lodged the following copy documents with the Tribunal on 9 January 2019:

1. Email dated 9 January 2019.
2. Photographs.
3. Scottish Secure Tenancy agreement.
4. Letter from applicant dated 16 March 2018 regarding the end of the tenancy.
5. S33 notice.
6. Letter from SafeDeposit Scotland dated 1 May 2018.
7. Letter from SafeDeposit Scotland dated 17 May 2018.
8. Letter from SafeDeposit Scotland dated 24 May 2018.
9. Text messages between the parties.

## **Discussion**

The applicant attended the CMD via conference call. The respondents attended in person.

## **The respondents' position**

The respondents agree that they owed £1000 of rent arrears. They left the property on 29 April 2018 and they agree that, as referred to in the CMD note of 18 December 2018, arrears of £375 accrued for March 2018 and arrears of £625 for April 2018 totalling £1000. They made reference to their text message of 5 April 2018 in which they propose that the deposit of £1000 can be applied to the arrears. They thought that this was agreed with the applicant. They also thought that if they did not respond to the letters from Safe-deposit Scotland regarding the return of the deposit, the deposit would be sent to the applicant to cover the arrears and this would be an end to the matter. The respondents have sought legal advice regarding the matter. They now take issue with the matters raised by the applicant in the letter from SafeDeposit Scotland. They regret not utilising the dispute resolution mechanism available with the deposit scheme.

## **The applicant's position**

The applicant's position was that she agreed as per her text of 5 April 2018, that the £1000 deposit could be applied to the arrears "provided that the house is in an acceptable condition when it is returned to us. If this is the case then your proposal sounds acceptable to me." The applicant sent a further text message on 16 April 2018 as follows "I'm disappointed neither you nor Ally have responded to my latest message. This is just to reiterate that I will be taking vacant possession of my house on Sunday 29 April 2018. And to remind you that your deposit is not in lieu of rent , but to cover any deficiencies in the property should it not be returned to me in the

same condition as I handed it to you as per the inventory". The applicant's position is that she was not happy with the condition of the property and the copy correspondence from SafeDeposit Scotland and sent to both parties appears to bear that out.

The tribunal offered the respondents an opportunity to seek legal advice in this matter and have a hearing fixed. They were content for the tribunal to make a final decision today and did not wish to seek further legal advice.

### **Findings in fact**

1. The parties entered into a tenancy agreement for the property dated 24 April 2016 and 1 May 2016.
2. The rental agreed was £625 per month.
3. The tenancy came to an end on 29 April 2018.
4. The respondents had rent arrears of £1000 at that date in respect of the sum of £375 for March 2018 and £625 for April 2018.
5. The arrears of £1000 remain unpaid and due to the applicant.

### **Reasons**

The tribunal was satisfied that the rent arrears of £1000 remain due. The tribunal noted the respondents' sincerely held belief that the return of the deposit of £1000 was in lieu of the rent arrears but this is not borne out by the written evidence lodged. The letters from SafeDeposit Scotland make it clear that the applicant was seeking the return of the £1000 deposit to cover cleaning of £150, damage to property or contents £150, gardening £50, redecoration £500, oven hob and dehumidifier £150. The text messages lodged make it clear the arrangement of the deposit covering the arrears was conditional on the property being returned to the applicant in a condition she found acceptable. It is unfortunate that the respondents did not take issue with the retention of the deposit at the time. The tribunal is satisfied that it has sufficient information before it today to make a final decision and the procedure has been fair.

### **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.

L Ward

28 January 2019

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Lesley A Ward Legal Member

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Date