



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (Act)

Chamber Ref: FTS/HPC/CV/22/4006

Re: Property at Flat 0/2, 1 Littlemill Court, Bowling, Glasgow, G60 5BP (“the Property”)

Parties:

JYB Properties Ltd, 251 Kirkintilloch Road, Bishopbriggs, Glasgow, G64 2JD (“the Applicant”)

Miss Joyce Walker, 27 Silver Arrow Gardens, Kilwinning, Ayrshire, KA13 7ET (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for payment be refused.

Background

This was an application under Rule 111 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (Rules)* and section 71(1) of the Act for an order for repayment of alleged rent arrears.

The Tribunal had regard to the following documents:

1. Application received 1 November 2022;
2. Background Summary document;
3. Tribunal Decision dated 9 September 2022;
4. Email correspondence between the Parties;
5. Rent Ledger dated 1 March 2022;
6. Partial AT5 and tenancy agreement dated 27 May 2016;
7. Complete tenancy agreement commencing 2 May 2016;

8. Written Representations from Respondent dated 14 February 2023;
9. Tenancy Agreement dated 1 June 2016 where landlord is detailed as Yvonne Brown;
10. Written Representations from Applicant dated 21 February 2023;
11. Letter of 17 August 2022 from Letting Agent;
12. Written Representations from the Applicant dated 27 February 2023;
13. Email of 27 October 2022 from Jim Brown to Respondent;
14. Emails of 27 & 28 July 2022 from Jim Brown to Tribunal;
15. Written Representations from the Applicant dated 3 March 2023;
16. Written Representations from Respondent dated 8 March 2023;
17. Written Representations from Applicant received 8 March 2023;
18. CMD note dated 14 March 2023;
19. Written Representations from Applicant received 16 March 2023;
20. Written Representations from Respondent dated 23 March 2023;
21. Written Representation from Applicant dated 28 March 2023.

Hearing

The case called for an in person Hearing on 13 June 2023. Mr Brown (Director) participated and represented the Applicant. The Respondent participated and represented herself.

The Tribunal explained the purpose and procedure of the Hearing to the Parties at the outset. It was clear that there was one single issue in dispute, namely, whether or not the Applicant had waived any entitlement to the last month's rent.

There was no dispute as to the fact the Respondent let the Property from the Applicant at a monthly rent of £550 and that the last month's rent was not paid.

Mr Brown gave evidence on behalf of the Applicant. He was questioned by the Tribunal, in particular, as to the contents of 4 emails he had issued to the Tribunal administration dated 27, 28 July, 5 and 6 August 2022 respectively. Each of these emails appeared to concede that he had "agreed" with the Respondent that she would not pay her last month's rent in lieu of her deposit.

The relevant wording of the emails of 27 July and 5 August 2022 was:

27 July

"in order to get the properties on the market I agreed for Joyce to not pay the last month's rent so that she would at least not lose her deposit."

5 August 2023

"I have just received some information from my own rental agent Rentlocally of 2 email correspondence between them and Joyce Walker.

The first email was in 23rd Feb 22 when she indicated she would be vacating the property earlier than the due date of 16th April and would leave 1st April and that she requested if it was OK that she would not pay her last months rent (due on 1st March) in lieu of her deposit. This was agreed.

The second email was 14th Mar 22 where Joyce Walker indicated to Rentlocally that she had lodged an application to First Tier Tribunal and that she would inform the First Tier tribunal that she would be with holding her last months rent which was actually due on the 1st March which was already agreed.”

When questioned by the Tribunal about this apparent “agreement” Mr Brown stated that at the time he thought he was obliged to return her deposit and that by allowing her to not pay the last month’s rent would constitute repayment of the deposit.

Mr Brown stated that after the Respondent raised the tenancy deposit application (PR/22/1746) and the Tribunal’s findings that the Applicant had not received any deposit which had been paid to a previous landlord from whom the Applicant had acquired the tenancy, his position changed. He had agreed on behalf of the Applicant for the last month’s rent not to be paid because he thought the Applicant was due to repay the deposit. As the Applicant wasn’t, Mr Brown decided that the last month’s rent was due.

Ms Walker’s position was that Mr Brown had agreed on behalf of the Applicant that she was not due to pay the last month’s rent in lieu of return of her deposit.

Both Parties were afforded the opportunity to question each other and make submissions.

Decision and Reasons

The Tribunal adjourned to consider the evidence it had heard during the course of the Hearing and the documentary evidence lodged in advance.

The Tribunal accepted both witnesses to be generally credible and reliable.

The only dispute between the Parties was whether or not Mr Brown had agreed/waived the last month’s rent of £550. The facts were not in dispute.

Both Party’s evidence was consistent that the Applicant had agreed the last month’s rent would not be paid in lieu of return of the Respondent’s deposit. The Tribunal noted and found that the Applicant’s position changed after the Hearing in the PR/22/1746 application. After the Tribunal in that application found that the Applicant had not received any deposit then the Applicant considered the rent was, after all, due.

The Tribunal considered and found that the Applicant had expressly agreed that the last month’s rent was not to be paid in lieu of return of her deposit. The fact that the Tribunal in PR/22/1746 subsequently found the deposit had not been paid to the Applicant but to a previous landlord from whom the Applicant had acquired the tenancy did not alter the express agreement of the Parties.

The Tribunal accordingly find that no rent was due in respect of the final month of the tenancy by virtue of the express agreement of the Parties.

Outcome

- Application refused.

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.



Legal Member/Chair

13 June 2023

Date