



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

Chamber Ref: FTS/HPC/CV/19/0659

Re: Property at 88a Hamilton Place, Aberdeen, AB15 5BA (“the Property”)

Parties:

Miss Jade Sheach represented by Mrs Jan Sheach of the same address, 20 Craig Gardens, Newton Mearns, East Renfrewshire, G77 6JT (“the Applicant”)

Mr Niall Reid, 16 Strathearn House, Auchterarder, Perthshire, PH3 1JL (“the Respondent”)

Tribunal Members:

Jim Bauld (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the applicant was not within the jurisdiction of the Tribunal and the application should be dismissed.

Background

1. This application is linked to an application under reference number FTS/HPC/PR/19/0434. In this application, the Applicant seeks payment of £450 being a deposit paid in respect of a tenancy at the property. A Case Management Discussion took place on 11 June 2019 and the application was continued to the hearing which took place on 26 July 2019.

The Hearing

2. The hearing in this matter took place in Glasgow on 26 July 2019. The hearing in respect of this matter was conducted simultaneously along with the hearing in respect of the case under reference FTS/HPC/PR/19/0434. The Applicant was represented by her mother Mrs Jan Sheach who was present at the hearing. The Respondent was not present at the hearing but took place via case conference call.
3. This application related to a deposit which had been paid by the Applicant to the Respondent in respect of a tenancy of the property. At the Case Management Discussion which had taken place on 11 June, the Tribunal at that stage had asked the parties to lodge documents showing that the deposit which had been taken had been lodged with an appropriate tenancy deposit scheme.
4. Prior to the hearing, evidence was provided to the Tribunal by the Applicant that the deposit had been lodged with Safe Deposit Scotland and that it had been lodged with Safe Deposit Scotland on 8 February 2019.
5. After some discussion, parties were agreed that part of the deposit had already been repaid by Safe Deposit Scotland to the Applicant. It was agreed that the sum of £213.07 had been paid to the Applicant by Safe Deposit Scotland leaving a balance of £236.93 being held by them. The parties were agreed that there were ongoing proceedings with Safe Deposit Scotland with regard to the return of the remainder of the deposit. These discussions were taking place in accordance with the relevant regulations contained in the Tenancy Deposit Schemes (Scotland) Regulations 2011. Those regulations have a dispute resolution mechanism whereby any dispute about the amount of a tenancy deposit to be returned to a tenant at the end of a tenancy is adjudicated in the manner set out in the regulations. Parties have indicated that the dispute resolution mechanism had been put on hold pending the Tribunal considering this matter.

6. During the hearing, the Respondent indicated that he was willing to instruct repayment of the remainder of the deposit to the Applicant on the basis that the Applicant would not only agree that it resolved this application but that the Applicant would also withdraw the other application under reference number FTS/HPC/PR/19/0434. The Tribunal explained the purpose of the application and the purpose of the other application to both parties. The Applicant's representative indicated that she was not willing to agree to settle this matter on the basis proposed by the Respondent.
7. The hearing then proceeded to consider matters related to the other application. The Tribunal indicated that it would issue its decision in respect of this application upon conclusion of all the evidence.

Findings in Fact

8. The parties entered into a tenancy agreement in respect of the property which commenced on 1 July 2018. The Applicant paid to the Respondent a deposit of £450. The Respondent was under a duty in terms of the Tenancy Deposit Scheme Regulations to make payment of that deposit into an approved Tenancy Deposit Scheme within 30 working days of the commencement of the tenancy.
9. The deposit was paid to the Safe Deposit Scotland tenancy deposit scheme on 8 February 2019.

Reasons for Decision

10. The Tribunal noted that in this case the application was seeking repayment of a tenancy deposit. It was agreed by the parties that a deposit had been taken of £450. This application is separate to the other application made by the Applicant in respect of the alleged breach of the requirements of the Tenancy Deposit Scheme (Scotland) Regulations 2011. The Tribunal noted that the 2011 Regulations contain a specific scheme relating to the lodging of tenancy deposits and to the repayment of tenancy deposits by the scheme

administrators. The Tribunal noted that in the event of a dispute between parties to a tenancy there is a dispute resolution mechanism set out in part 6 of the Regulations. The Tribunal noted that the parties were already engaging in that dispute resolution mechanism.

11. The Tribunal took the view that the Tribunal had no power to make any orders with regard to repayment of the deposit or any part of it. The Tribunal took the view that the provisions of the Tenancy Deposit Scheme (Scotland) Regulations 2011 clearly reserved the jurisdiction in these disputes to the dispute resolution mechanism set up by the tenancy deposit scheme administrator.

12. Accordingly the Tribunal decided it could not make an order in this matter and that it had no jurisdiction to do so and accordingly the Tribunal decided to dismiss this application.

Decision

13. The Tribunal, having no jurisdiction in this matter, dismissed 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.

Jim Bauld

Legal Member/Chair

9 August 2019

Date