

**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/19/1005

Re: Property at 7/3 Granton Medway, Edinburgh, EH5 1HQ (“the Property”)

Parties:

Miss Zuzanna Bartosz, 36 The Quilts, Edinburgh, EH6 5RL (“the Applicant”)

**Mr Marcin Wala, 10/6 West Pilton Way, Edinburgh, EH4 4GW (“the
Respondent”)**

Tribunal Members:

George Clark (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the application should be granted without a hearing
and made an Order for Payment by the Respondent to the Applicant of the
sum of £300.**

Background

By application, received by the Tribunal on 1 April 2019, the Applicant sought an Order for Payment in the sum of £300 and an order for compensation.

The application was accompanied by a statement in which the Applicant said that she was seeking the return of a deposit of £300 that she had paid to the Respondent in respect of a tenancy of the Property. She had given notice to the Respondent of her intention to move out of the Property on 7 November 2018, but that she could move out earlier if she managed to find a new tenant to replace her. She had gained the impression that the finding of a new tenant was a condition of getting her deposit back and she had helped to find potential new tenants. She had been informed that there were some discussions between the Respondent and those tenants, but the Respondent had not replied to her requests for confirmation as to whether any decision had been made. She had then been informed by the Respondent that she had to move out of the Property on the following day. She had demanded the return of her deposit and a partial refund of the rent she had paid in advance, together with compensation for having to move out at such short notice. She had decided to keep the room until 7 November and to move out most of her belongings and thereafter to clean the room and give back the keys just before the lease end-date. When she arrived to clean the room, she was informed that someone had moved in shortly after

she had removed most of her belongings. She did not get back the rest of her belongings.

The application was accompanied by copies of text message exchanges between the Parties, including one message dated 7 November 2018 from the Applicant requesting from the Respondent the tenancy deposit scheme number and one from the Respondent, dated 8 November 2018, requesting the Applicant's e-mail address to give her back part of the deposit.

Case Management Discussion

A Case Management Discussion, due to be held on 23 May 2019, was postponed at the request of the Applicant and was rescheduled for 18 June 2019. It was adjourned to 24 July 2019 and meantime the Tribunal directed the Applicant to provide confirmation in writing of any payment made to the Respondent in November 2018. The Respondent was directed to lodge in process confirmation as to when the new tenants had moved in to the Property and confirmation in writing as to any deductions that he suggested should be made from the deposit. The Direction required the Parties to provide the information sought within 21 days. Neither Party provided to the Tribunal any of the information required.

The reconvened Case Management Discussion took place at George House, 126 George Street, Edinburgh on the morning of 24 July 2019 by way of a conference call. The Applicant participated in the call. The Respondent was not present or represented at the Case Management Discussion.

The Applicant told the Tribunal that her notice was due to expire on 7 November 2018, but she had indicated a willingness to move out earlier if a replacement tenant could be found. In mid-October, the Respondent had told her she had to move out on the following day, but, whilst she had removed most of her belongings after that conversation, she had been of the view that she was entitled to continue to have occupation of the Property until 7 November, even though she was no longer living there. On or about 7 November, she had called at the Property to clean it and to pick up the rest of her belongings but had discovered that a new tenant had already moved in. She accepted, having checked her records, that she had not paid rent for November 2018.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a hearing, including making a decision. The Tribunal was satisfied that it had before it all the information and documentation it required and that it would determine the application without a hearing.

The Applicant had lodged a copy of the Room Rental Agreement between the Parties dated 29 August 2018. It bore to be for a period of 6 months, but stated that either Party could terminate the Agreement on giving 30 days written notice. The Respondent had not challenged the right of the Applicant to vacate the Property as at 7 November 2018, so the Tribunal accepted that the required notice had been given by the Applicant. There also appeared to be no dispute as to the amount of the deposit. The Tribunal accepted that the tenancy had ended on 7 November 2018.

The Respondent had failed to provide the Tribunal with information as to when the new tenants had moved in, but the Applicant had failed to provide the Tribunal with any evidence that she had paid rent to cover any part of November 2018 and, in the

conference call, she confirmed that, having checked her records, she had not paid rent for that month. Accordingly, the Tribunal determined that no refund of rent was due to the Applicant.

The Respondent had failed to provide the Tribunal with any evidence suggesting that he was entitled to make any deductions from the deposit. The Applicant had stated that she had arrived to clean the room after she had moved most of her belongings out, but had found that the room had already been re-let. The view of the Tribunal was, therefore, that the Respondent had taken the decision to re-let without giving the Applicant the opportunity to clean the room on her departure and that, accordingly, he was not entitled to claim that any part of the deposit should be retained by him.

The Respondent had failed to provide confirmation as to when the new tenants had moved in, so the Tribunal held that this had happened before the Applicant had finally removed the balance of her belongings, which had not been returned to her. The Applicant, had, however, provided no specific claims as to any loss incurred thereby and the Tribunal was unable to make an Order for compensation in regard to the loss of any items.

The Tribunal considered whether any compensation should be awarded to the Applicant for having to move out at very short notice, but decided that, as she would have had the option of remaining resident in the Property until the date of expiry of the notice she had given, but had chosen not to do so, an award of compensation was not appropriate.

Decision

The Tribunal determined that the application should be granted without a hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £300.

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.

Leg

24 July 2019

Date