



**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/19/1152

**Re: Property at Ground Flat, 46 Tinto Road, Newlands, Glasgow, G43 2AL (“the
Property”)**

Parties:

Mr John MacKenzie, Keir, Buchlyvie, Stirling, FK8 3PA (“the Applicant”)

**Mr Keith Gibbs, Ms Donna McCormack, both c/o 122 Eastwood Mains Road,
Giffnock, Glasgow, G76 7NF (“the Respondent”)**

Tribunal Members:

George Clark (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the application should be dismissed without a
Hearing.**

By application, received by the Tribunal on 12 April 2019, the Applicant sought an Order for Payment by the Respondent of the sum of £541.92. The claim related to a tenancy deposit which the Applicant had, in error, authorised SafeDeposits Scotland to refund to the Respondent.

The application was accompanied by copies of a Short Assured Tenancy Agreement between the Parties, commencing on 4 September 2009, with a deposit of £550, a letter from the Applicant’s letting agents, Fineholm Letting Services Limited, to Respondent, dated 5 December 2018 and an e-mail from them to the Respondent dated 31 January 2019. The letter set out a number of items picked up at the final inspection and stated that the agents would be taking instructions from the Applicant, as the points raised were only recommendations. The e-mail stated that they now had instructions to claim the full amount of the deposit, due to the amount of work required at the Property.

On 15 August 2019, the Tribunal advised the Parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written representations by 4 September 2019.

The Respondent, Ms McCormack e-mailed representations to the Tribunal on 30 August 2019. She stated that the tenancy had ended in December 2018. She had received correspondence from the Applicant's letting agents on 31 January 2019 to the effect that the Applicant was claiming the full deposit. Her intention at that time was to dispute the claim, but on 6 February 2019, before she had replied, she received further correspondence from the letting agents with a Termination Certificate advising that the full deposit would be refunded under deduction of 3 days' rent (£58.08). She contacted the letting agents to query the two conflicting e-mails and was told that the latter one was correct. Accordingly, she claimed back the deposit balance of £541.92 from SafeDeposits Scotland.

On 8 March 2019, she had received a telephone call from the letting agents to say that, through their fault, the deposit had been paid to the Respondent in error. She added that she would have disputed most of the items on the list set out in the letting agents' letter of 5 December 2018.

Case Management Discussion

A Case Management Discussion was held at Glasgow Tribunals Centre on the morning of 25 September 2019. The Applicant was not present or represented. The Respondent, Ms McCormack was present.

The Respondent told the Tribunal that, following the letter of 5 December 2018, she had expected to receive details of costings, which would enable her to make representations to SafeDeposits Scotland, but a few days after the e-mail saying merely that the Applicant was claiming the whole deposit, she received the further e-mail to the effect that the whole deposit, less three days' rent, would be refunded to her (the Respondent had vacated the Property on 3 December 2018). She had then telephoned the letting agents to say she had two contradictory e-mails and had been told that the second one was correct and that the deposit would be refunded, under deduction of three days' rent. The Respondent telephoned the letting agents a second time that afternoon and they again confirmed that the second e-mail was correct and gave her the SafeDepositsScotland reference number for the deposit. She contacted SafeDeposits Scotland with her bank details and the deposit was refunded to her. A month later, the letting agents had telephoned her, saying an error had been made and demanding return of the payment she had received. She advised the Tribunal that the Property had undergone extensive renovation since the end of the tenancy.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations states 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 Tribunal decided to dismiss the application. The Applicant had not provided any vouching for the works, so the Tribunal would not have made an Order for Payment. As it appeared that the Property had undergone extensive renovation, the Tribunal could not determine whether all or any of the work set out in the letting agents' letter

of 5 December 2108 had actually been carried out and the Tribunal would have required receipted Invoices to vouch the claim.

The view of the Tribunal was that the Respondent, Ms McCormack, had acted perfectly reasonably when she received the two contradictory e-mails. She had twice asked the letting agents which one was correct and had twice been told that it was the second one, which confirmed that the only deduction the Applicant was claiming from the deposit was three days' rent. The Applicant's letting agents had confirmed this to SafeDeposits Scotland, so had had at least three opportunities to correct an error, if such an error had been made. The Respondent was entitled to rely on the advice she was given when she queried the e-mails.

The Tribunal could not speculate on whether all or any of the items listed in the letting agents' letter of 5 December 2019 would have been upheld by SafeDeposits Scotland, had they been asked to adjudicate on the question of the deposit, but the Respondent indicated that she would have disputed the claims. The evidence presented to the Tribunal indicated that the Applicant's letting agents had been entirely responsible for any error that had occurred and that the Respondent had taken all reasonable steps to check that she could rely on the second e-mail. In those circumstances, the Tribunal was not prepared to grant the application.

Decision

The Tribunal determined that the application should be dismissed without a Hearing.

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.

George Clark

Legal Member/Chair

25 September 2019
Date