



**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/22/3948**

**Re: Property at 12 Lintwhite Court, Bridge of Weir, PA11 3NW (“the Property”)**

**Parties:**

**Dr Andrew Tait, Miss Catriona Lockie, 0/2, 1 Greenlaw Avenue, Paisley, Renfrewshire, PA1 3RB; 0/2, 1 Greenlaw Avenue, Paisley, PA1 3RB (“the Applicant”)**

**Ms Ashley Martin, UNKNOWN, UNKNOWN (“the Respondent”)**

**Tribunal Members:**

**Petra Hennig-McFatrige (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order for the amount of £ 1,192.50 by the Respondent to the Applicants should be granted.**

**A: BACKGROUND:**

- 1.** The application for an order for payment under S 71 of the Private Housing (Tenancies) (Scotland) Act 2016 arising from a Private Residential Tenancy Agreement between the parties was made by the Applicants on 29.10.2022. The amount claimed in the application was £1,192.50
- 2.** The following documents were lodged in support of the application:
  - a)** Tenancy agreement
  - b)** Deposit payment screenshot
  - c)** Email exchange between parties 29.7.2022 to 9.10.2022
  - d)** Deposit scheme replies
  - e)** Timeline of events document
  - f)** Rightmove screenshot
  - g)** bank statements
  - h)** cover letter

3. The application was accepted on 23 November 2022. A Case Management Discussion (CMD) was scheduled for 8.2.2023. Service by Sheriff Officers failed. The CMD was re-scheduled for 27.3.2023 by teleconference. The application and CMD notification was served on the Respondent by Service by Advertisement on 21.2.2023 and notification of Service by Advertisement emailed to the available email address for the Respondent on that day. The Tribunal was satisfied that the Respondents had the required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.
4. No formal representations were received from the Respondent.

### **B: The CMD**

1. Only the Applicants took part in the CMD.
2. The legal member explained the purpose and process of the CMD.
3. Dr Tait and Ms Lockie confirmed that they had paid the deposit of £1,192.50 to the Letting Agents as required. The address for the Respondent was taken from the Landlord register and was clearly no longer correct. They had not received any further contact from the former landlord. They had not received the deposit back. They had checked with all three deposit schemes and all advised them no deposit was lodged. The tenancy ended on 24.9.2022. When they had queried this with the former landlord, the former landlord had become quite threatening. She advised them she wished to sell the property. The Applicants stated this was clearly not the case as they saw the property advertised for rent at a higher rate just after they moved out. They had not been provided with any information about the deposit being registered and when they met the previous tenant by chance had been told there had been similar problems for the previous tenant as well. They now require repayment of the deposit through the Tribunal as they cannot use the deposit scheme to get the deposit back.

### **C: FINDINGS IN FACT**

Based on the documents and the discussion at the CMD the Tribunal makes the following findings in facts:

1. The deposit of £1,192.50 was paid by the Applicants to the Respondent's Letting Agent on 7.7.2022.
2. The parties entered into a Private Residential Tenancy over the property which commenced on 29.7.2022.
3. In terms of Clause 11 the landlord is obliged to lodge the deposit with a registered scheme. The deposit is ££1,192.50. No scheme was specified in the tenancy agreement.
4. The tenancy ended on 24.9.2022.
5. On 2.8.2022 the tenants initially asked for information as to which deposit scheme the deposit was lodged in. This information was never provided.
6. The deposit was not lodged with a tenancy deposit scheme and remained unprotected for the whole duration of the tenancy.

7. None of the information required in terms of Regulation 42 was provided to the Applicants by the Respondent.
8. The dispute resolution service of a deposit scheme was not available to the Applicants at the end of the tenancy when the deposit was not returned to the Applicants.
9. The Respondent had not updated her details in the landlord register.
10. The property had previously been rented out.
11. The Respondent has not repaid the deposit to the Applicants.

### **D: Reasons for decision**

#### **1. Relevant legislation:**

In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Power to determine the proceedings without a hearing

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties

2. The Tribunal did not consider that there was any need for a hearing as there had been no representations from the Respondent challenging that the deposit had been received and had not returned to the Applicants. No representations were made to challenge that the whole deposit was due to be returned to the Applicants.

3. The Tribunal makes the decision on the basis of the documents lodged by the Applicants and the information provided by them at the CMD.

4. The Tribunal is thus satisfied that the Respondent had entered into a Private Residential Tenancy Agreement with the Applicant for the property. The deposit of £1,192.50 was paid by the Applicants to the Respondent's letting agent on 7.7.2022 as shown by the transaction screenshot.

5. The Tribunal accepts that the deposit has not been returned to the Applicants. The Applicants had lodged bank statements up to and including 3.10.2022, which show that following the end of the tenancy on 24.9.2022 the deposit had not been returned. The Tribunal accepts the verbal update from the Applicants that the deposit has still not been returned and remains outstanding. There is nothing to suggest that the Applicants would not be entitled to receive the whole deposit back. The Applicants had been deprived of the protection of the deposit scheme mechanism and thus had to apply to the Tribunal for an order for repayment of the deposit because it was not lodged with a deposit scheme and thus the dispute resolution mechanism of the deposit schemes was not available to the Applicants.

6. As the amount is due and not disputed the Tribunal thus grants a payment order for the amount of £1,192.50, which is the amount of the deposit set out in clause 11 of the tenancy agreement.

### **E: Decision:**

**The Tribunal grants the order for payment of the amount of £1,192.50 by the Respondent to the Applicants.**

### **F: 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.**

**Petra Hennig McFatridge  
Legal Member**

**Date : 27 March 2023**