

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision in an application for Review under Rule 39 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (contained in Schedule Part 1 of the Chamber Procedure Regulations 2017 (SSI No 328), as amended) (“the Procedure Rules)

In connection with

Chamber File Reference number: FTS/HPC/CV/18/1084

Re: Property at Flat B 53 Rose Street Aberdeen AB10 1UB (“the Property”)

The Parties:

Mr Daniel Buda, 39/6 Comely Bank, Edinburgh, EH4 1AG (“the Applicant”)

Miss Oana Iosif, 49 Harehill Road, Bridge of Don, Aberdeen, AB22 8RH (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Melanie Booth (Ordinary Member)

1. DECISION

The First Tier Tribunal for Scotland (Housing and Property Chamber) (The Tribunal) determined that the Applicant’s Application for Review being wholly without merit it should be refused.

2. Statement of Reasons

1. The Applicant lodged an application on 30th April 2018 for a claim for damages and cleaning arising from the end of the tenancy of the Property between the Applicant and the Respondent. He claimed the sum of £2,504.63, narrating that “the deposit was not lodged correctly and was lost, the deposit has been awarded to the former tenant by this tribunal this is a genuine counterclaim for genuine expenditure suffered at the end of the

former tenant's tenancy which I require to be recovered. I am also claiming for costs regarding damage caused during the tenancy to the kitchen window."

2. A hearing in the above application took place on 6th September 2019 at 2pm in the Glasgow Tribunal Centre. The Respondent attended and brought her husband Mr Rohan Baboolal as a witness. The Applicant did not attend. The Applicant along with the Respondent was advised of the date of the Tribunal Hearing by letter and recorded delivery letter as well as by e-mail. The Tribunal made a determination under S 16 of the Housing (Scotland) Act 2014 ("the Act") and produced a statement of reasons for the decision ('the decision'). On 17th September the Tribunal issued its statement of decision with reasons which did not grant any order against the Respondent.
3. By e-mail dated 25th September and confirmed in further e-mails dated 26th September, the Applicant applied to the Tribunal for recall of the decision, review of the decision and permission to appeal the decision. The Tribunal has considered and rejected the application to recall as per the separate decision made under that ground.
4. Rule 39 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 as amended Provides as follows :-

(1) The First Tier Tribunal may either at its own instance or at the request of a party review a decision, made by it, except in relation to applications listed in Rule 37 (3) (b) to (j), where it is in the interests of justice to do so.

(2) An application for review under Section 43 (2) (b) of the Tribunal's Act must

a) be made in writing and copied to the other parties

b) be made within 14 days of the date on which the decision is made or within 14 days of the date that the written reasons (if any) were sent to the parties and

c) set out why a review of the decision is necessary

(3) If the First Tier Tribunal considers the application is wholly without merit the First Tier Tribunal must refuse the application and inform the parties of the reason for the refusal.

(4) Except where paragraph (3) applies the First Tier Tribunal must notify the parties in writing

a) setting a time limit for any response to the application by the other parties and seeking the views of the other parties on whether the application can be determined without a hearing; and

b) may at the discretion of the First Tier Tribunal set out the First Tier Tribunal's provisional views on the application.

(5) In accordance with rule 18 the decision may be reviewed without a hearing.

(6) where practicable the review must be undertaken by one or more of the members of the First Tier Tribunal who made the decision to which the review relates.

(7) Where the First Tier Tribunal proposes to review a decision at its own instance it must inform the parties of the reasons why the decision is being

reviewed and the decision will be reviewed in accordance with paragraph (4) (as if an application had been made and not refused).

(8) A review by the First Tier Tribunal in terms of paragraph (1) does not affect the time limit of 30 days in regulation 2(1) of the Scottish Tribunals Time Limits Regulations 2016 for making an application for permission to appeal.

5. I am satisfied the request for a review having been made on 25th September is timeous and therefore competent. As the Tribunal was not clear a copy had been sent to the Respondent the Tribunal has passed a copy of the request to the Respondent.
6. Rule 39(2) is prescriptive. It provides that an application for review “must” meet certain criteria one of which is to be copied to the other parties. However subsection a) is to some extent ambiguous as to who must copy the application and when. In the particular circumstances of this case and having regard to the overriding objective I have reached the conclusion that the Respondent’s application for a review meets the criteria in Rule 39(2).
7. The next consideration is whether in terms of Rule 39(3) the application for review is entirely without merit.
8. The Applicant in his first e-mail of 25th September asks “Please have this case recalled and reviewed in accordance with the procedure. I also seek permission to appeal. In the meantime please supply a payment order so that I can instruct a sheriff officer forthwith.”
9. The Tribunal Administration responded on 26th September asking which procedure he wished to apply for and providing guidance notes on the recall, review and permission to appeal procedures and also advising that no payment order was due as per the decision issued to the Applicant.
10. The Applicant responded stating:-

“As per point 7.

The Respondents previous deposit was returned to her as evidenced by documents passed into this Tribunal previously.
Please issue the payment order.”

The Applicant responded by e-mail again stating:-

“this is not the case as per point 7.

I wish for the decision to be recalled and reviewed.

I also seek permission for this to be appealed.

Clearly evidence has been overlooked or ignored in the respondents favour as evidenced.

Another example of this: outcome details that my evidence was not supplied to the member in colour. Can you please explain this? All evidence was supplied to you in colour.”

11. On 7th October the Tribunal wrote to the Applicant for clarification of his application noting

Secondly with regard to the request for a review can you also please

advise in terms of Rule 39 of the Tribunal rules why a review is necessary?

You have mentioned that you feel evidence has been overlooked can you please clarify what evidence has been overlooked or not considered?

You also mention that the deposit was returned to the Respondent as evidenced by the documents but the Tribunal has not seen any documents showing the deposit has been returned and that was not the evidence presented at the Hearing. The Tribunal is aware the Respondent raised and was successful in an action under Rule 103 for a penalty for the Landlord's failure to lodge the deposit in a tenancy deposit scheme. This is not an action for return of the deposit and does not deal with that.

The tribunal requires that you provide such reasons within 7 days

Thirdly - please identify the alleged points of law you wish to appeal and the result you are seeking? Again please identify this within 7 days.

12. The Applicant has not responded to this request so there is no further explanation or points of law raised.
13. The application for review appears to be based on 2 points:-

(1). - that the Applicant is entitled to an order for payment because of point 7 of the decision. Point 7 in the reasons of the decision states

“For the above reasons the Tribunal found that the Respondent was only responsible for damage to the kitchen worktop and one glass/mug. The cost of these items would be £300 plus no more than £1 for the glass/mug based on the Applicant’s estimate of the cost of replacements. Given the Applicant has not returned the Respondent’s deposit of £575 this deposit would require to be deducted from any sum due to the Applicant and therefore no order for payment is due or required.”

The Tribunal did agree that there was damage to the worktop and the Respondent admitted this damage to the kitchen worktop and that one glass or mug had been broken. The Applicant appears in his e-mail requesting the review, to believe that this entitles him to an order for payment of that amount. However the Tribunal found that as the deposit has not been returned to the Respondent and that the Applicant has retained the deposit he is therefore compensated for that damage. In addition there was no proof the damage has in fact been repaired. There was no evidence from the Applicant to show that the deposit had in fact been returned to the Respondent. The Applicant had been directed in the Direction of 26th April to provide evidence that the deposit had been returned to the Respondent. No such evidence has been produced. The Respondent denied it had been returned to her and the Tribunal found as a matter of fact that the deposit was not returned.

A previous Tribunal did make an order under Rule 103 for a payment of a penalty to the Respondent for the Landlord's failure to lodge the deposit in a tenancy deposit scheme. This is not an order for the return of the deposit itself but a separate payment order and therefore irrelevant to this case.

The Applicant has not provided any other reason to show that the Tribunal erred in their conclusion about the return of the deposit and therefore the application for review on this point is refused.

14. The second point the Applicant makes is:

(2). "Clearly evidence has been overlooked or ignored in the respondents favour as evidenced.

Another example of this: outcome details that my evidence was not supplied to the member in colour. Can you please explain this? All evidence was supplied to you in colour."

15. The Tribunal has considered all evidence provided by the Applicant in writing.

The Applicant did not attend any CMD or the hearing itself so there has been no oral evidence from the Applicant to explain or supplement the written evidence. The Applicant did not respond to the Direction issued on 26th April 2019 which amongst other requests asked for "documentary evidence from the tradesmen who carried out the work invoiced as part of the claim that all of the works invoiced for had been carried out and that all invoices were paid; asked for an address and contact details for Moir Cleaning and written details of any personal, family, ownership, employment or financial relationship between him and Crombie and Company, GAB Home Improvement and Moir Cleaning."

16. The Tribunal only had copies of photographs which were black and white including photographs from both the Applicant and the Respondent. The Tribunal is satisfied that the totality of all the evidence provided supports the decision it has reached and that failure to see colour photographs is not material, nor were they available. In this case given the other written evidence, oral evidence and supporting written evidence from the Respondent and her witness and lack of evidence from the organisations purportedly used by the Applicant to clean the property, and other tradesmen, after the Respondent left that they did in fact carry out this cleaning and other repairs and lack of any evidence that these organisations exist and are independent of the applicant, the Tribunal is satisfied that the interests of justice have been served and that the application for review is wholly without merit.

Chairing Legal Member of the Tribunal
Dated: 25 October 2019