



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) (Scotland) 2016 Act

Chamber Ref: FTS/HPC/CV/22/1729

Re: Property at 15 Mentone Gardens, Edinburgh, EH9 2DJ (“the Property”)

Parties:

Kesiena Ugbogure, Flat 2, 31 Harewood Crescent, Edinburgh, EH16 4XS (“the Applicant”)

Zeshan Ahmed, 12 Arboretum Road, Edinburgh, EH3 5PN; and Kamran Ahmed, c/o 61A Queen Street, Edinburgh, EH2 4NA (“the Respondents”)

Tribunal Members:

Joel Conn (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. This was an application by the Applicant for civil proceedings in relation to a private residential tenancy in terms of rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”), namely an order for repayment of a deposit due under the Tenancy Agreement. The tenancy in question was a Private Residential Tenancy (“PRT”) of a room at the Property (with shared facilities) by the Second Named Respondent to the Applicant (though the Tenancy Agreement stated it was by the First Named Respondent and implied it was for the full Property) commencing on 1 February 2022. The Tenancy came to an end on 30 April 2022.
2. The application was dated 3 June 2022 and lodged with the Tribunal shortly thereafter. It was originally raised against the First Named Respondent only but was amended prior to service to be against both Respondents. The application

relied upon evidence that a deposit of £750 was due in terms of the Tenancy, paid to the First Named Respondent around the commencement of the tenancy (the Applicant said it was paid on 31 January 2022 and provided a bank statement showing payment of £1,500 of the deposit and first month's rent), but never paid into an approved scheme and never returned. The application sought return of the full deposit of £750. A parallel application was raised (under reference PR/22/1730) seeking compensation under the Tenancy Deposit Schemes (Scotland) Regulations 2011/176.

The Case Management Discussion

3. On 20 September 2022 at 10:00, at a case management discussion ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote conference call, there was appearance by the Applicant only. The Applicant confirmed that he insisted on his application.
4. The Applicant confirmed that he had not heard from the Respondents, nor anyone on their behalf, since the lodging of the application. The clerk confirmed no correspondence or papers had been received. I noted that service of the application by Sheriff Officers upon the First Named Respondent had delivered papers to his wife on 15 August 2022, and upon the Second Named Respondent at his contact address (Saltoun Lettings) that appears on the Landlord Registration database. Having waited until 10:08 to commence the CMD, I was satisfied to consider the application in the Respondents' absence. (No one for either Respondent attempted to call into the teleconference by the time of its conclusion around 10:40.)
5. I took the Applicant through the application papers and sought some further information. I drew the Applicant's attention to the Land Register information stating that the owner of the Property was the Second Named Respondent and Subhaan Ahmed; and that the Landlord Registration database named only the Second Named Respondent as landlord. The Applicant stated that he only dealt with the First Named Respondent and did not know of the Second Named Respondent's involvement until after the end of the tenancy. (He believed that the Second Named Respondent and Subhaan Ahmed may be the First Named Respondent's parents.)
6. Between the papers and the submissions, I noted the following:
 - a) The Applicant is a student. He and his wife moved from Nigeria to Edinburgh and required to stay in hotel accommodation for a period.
 - b) His wife then found the room at the Property on a website called "Spare Rooms".
 - c) He dealt only with the First Named Defender, principally contacting each other through WhatsApp. (A long WhatsApp transcript was included within the papers.)
 - d) He was told by the First Named Defender that the rent of £750/month included all bills, except gas which needed to be split between the others in the Property.
 - e) The Property comprised of a shared kitchen and bathroom on the ground floor; a bedroom on the ground floor that the Applicant and his wife lived in;

a second-floor bedroom (with en suite) that an English woman (“D”) lived in; and a second-floor twin bedroom what two students from Hong Kong lived in. The ground floor bathroom was used by everyone except D. They all shared the use of the ground floor kitchen. All bedrooms had individual locks.

- f) The Applicant and his wife started to look for new accommodation in March 2022 and told the First Named Respondent. Viewing commenced during this period, discussed between them by WhatsApp. (I noted the texts by the First Named Respondent to the Applicant where, during a disagreement over the suitability regarding a proposed viewing (given the Applicant’s wife’s work schedule) the First Named Respondent stated: “I am the landlord here not you.” (7 April 2022 at 15:47) and “Nobody is bashing into the room, I am the owner of the property.” (7 April 2022 at 15:49).) An agreement to leave on 30 April 2022 was reached.
 - g) After the Applicant vacated, and requested return of the deposit, the First Named Respondent refused to provide it, claiming that Council Tax of £1,200 was due by him for the three months he occupied. The Applicant believed that the Property was exempt (given that 3 out of 5 of the occupants were students) plus that the £750 rent had been inclusive of all bills except electricity.
 - h) The Applicant has checked with all three approved tenancy deposit scheme providers and none have his deposit. He has never received any correspondence suggesting that the deposit is held by any of the three.
7. I noted the terms of the Tenancy Agreement. Along with referring to the First Named Respondent as the only landlord (and not mentioning either the Second Named Respondent nor Subhaan Ahmed who are actually the owners); it reads as if the whole of the Property (and not just a single room) are included in the PRT. Further:
- a) The deposit provisions requiring a deposit of £750 to be paid are in clause 10. The said clause refers to Mydeposits Scotland as the tenancy deposit scheme provider to be used.
 - b) Clause 25 includes a requirement that the “Tenant will notify the local authority that they are responsible for paying the council tax and any other associated charges” and that “the Tenant will be responsible for payment of any council tax...”.
 - c) At clause 26, the “Tenant undertakes to ensure that the accounts for the supply to the Let Property of [gas/electricity/telephone/TV licence/internet/broadband] are entered in his or her name with the relevant supplier. The Tenant agrees to pay promptly all sums that become due for these supplies relative to the period of the tenancy.” (Emphasis in the original, suggesting that the highlighted wording was supposed to be amended by appropriate deletions before the Tenancy Agreement was signed.)
8. No motion was made for expenses.

Findings in Fact

9. The Second Named Respondent, as co-proprietor of the Property, let a room with shared facilities at the Property to the Applicant under a Private Residential Tenancy dated 31 January 2022 commencing on 1 February 2022 (“the Tenancy”).
10. The First Named Respondent was incorrectly stated as the landlord in the Tenancy Agreement.
11. The Tenancy Agreement at clause 10 required the Applicant to make payment of a deposit of £750 and narrated that the “scheme administrator” for holding the deposit under the 2011 Regulations was “Mydeposits Scotland”.
12. The Applicant paid a deposit of £750 to the First Named Respondent on or about 31 January 2022.
13. Neither of the Respondents, nor anyone on their behalf, has paid the Applicant’s deposit into an approved tenancy deposit scheme provider.
14. The Tenancy was brought to an end on or about 30 April 2022.
15. The Applicant has not yet been repaid his deposit from either of the Respondents.

Reasons for Decision

16. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. In light of the submissions by the Applicant, and the absence of any appearance by the Respondents to contradict the submissions provided, I was satisfied both that the necessary level of evidence had been provided through the application and orally at the CMD, and that it was appropriate to make a decision on the application.
17. I was satisfied to accept the submissions of the Applicant as factually well-founded, but in any event there was no contradiction being made by the Respondents. Therefore, I see no grounds to doubt the payment of the deposit; that it was not lodged appropriately; that it has not been returned; nor that the reasons for it not being returned are related to alleged Council Tax liability (which would not normally be for a landlord to collect and recharge to a tenant).
18. It does appear that the Applicant’s understanding of what the £750/m payment included, his liability for utilities, and how Council Tax was administered and levied, were at odds with the information available to him in the Tenancy Agreement (and also the explanatory notes). I do not see that this has any bearing on the question of return of the deposit, as I cannot see this as valid ground for a landlord to retain a deposit, at least absent some clear evidence that the Applicant breached clause 25 of the Tenancy Agreement and has somehow caused a loss to the Respondents.

19. In regard to which party is liable, the First Named Respondent is not the landlord, but some form of agent. Had there been no information on who the owner was, the First Named Respondent could be solely liable as an agent for an undisclosed principal. After disclosure of the Second Named Respondent's involvement, the Applicant could still have opted to pursue only the First Named Respondent, but has opted to pursue the Second Named Respondent. In regard to Subhaan Ahmed's liability, the application has not been raised against her (though I think it would have been competent to have done so). Only the Second Named Respondent has held himself out as landlord in the Landlord Registration database and it is open to the Applicant to seek the order against only one of the co-proprietors as they would be jointly and severally liable in regard to claims against the "landlord". I am thus satisfied to grant the order now, and hold it can only be against the Second Named Respondent (with no order against the First Named Respondent) as the Second Named Respondent is now the disclosed principal.
20. In the circumstances, I am awarding full payment of the deposit of £750. I shall apply interest on the sum under Procedure Rule 41A at 8% per annum from the date of Decision as an appropriate rate.
21. I would request that the Tribunal clerk send a copy of this Decision and that in the parallel application PR/22/1730 to City of Edinburgh Council for their information in regard to the Second Named Respondent's registration as a landlord of the Property.

Decision

22. I am satisfied to grant an order against the Second Named Respondent for payment of the sum of £750 to the Applicant with interest at 8% per annum running from today's date.

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.

Joel Conn

Legal Member/Chair

20 September 2022

Date