



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) Act 2016

Chamber Ref: FTS/HPC/CV/22/4502

Re: Property at Quoybanks, North Ronaldsay, Orkney, KW17 2BG (“the Property”)

Parties:

Miss Daryl McLeod and Mr James Wilson, Kirk Flat St Anns, Papa Westray, Orkney, KW17 2BU; (“the Applicants”)

Mrs Sandra Mawson, Roadside, North Ronaldsay, Orkney, KW17 2BG (“the Respondent”)

Tribunal Members: Shirley Evans (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment against the Respondent in favour of the Applicants in the sum EIGHT HUNDRED POUNDS (£800) STERLING. The order for payment will be issued to the Applicants after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.

Background

1. This is an application dated 5 October 2022 made by the Applicants for an order for payment of their tenancy deposit under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
2. The application was accompanied by copies of various bank statements, bank transaction details, excerpts of Whats App messages between the parties dated 15 August 2021 -15 September 2022 and letters from Letting Protection

Scotland dated 22 September 2022, My Deposits Scotland dated 28 September 2022 and Safe Deposits Scotland dated 27 September 2022.

3. On 7 February 2023 the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 1 March 2023 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 22 March 2023. The Tribunal advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 4 April 2023. This paperwork was served on the Respondent by way of Recorded Delivery post. The Respondent signed for this on 13 March 2023. A signed proof of postage was received by the Tribunal administration.
5. The Respondent did not make any written representations by 22 March 2023.

Case Management Discussion

6. The Tribunal proceeded with a CMD on 4 April 2023 by way of teleconference. Ms McLeod and Mr Wilson both appeared. There was no appearance by or on behalf of the Respondent despite the teleconference starting 5 minutes late to allow the Respondent plenty of time to join. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in her absence.
7. The Applicants confirmed that Ms McLeod would speak on behalf of both of them. Ms McLeod explained they had contacted the Respondent as they were homeless to see whether they could get a tenancy of the Property. The Tribunal noted the Whats App messages in that regard. Ms McLeod explained that the tenancy of the Property with the Respondent started on 1 September 2021. They paid £800 deposit and the first month’s rent to the Respondent on 1 September 2021. She referred the Tribunal to a copy of the bank statements lodged which showed these payments were made to the Respondent. Ms McLeod advised that the rent was agreed at £800 per month. The Tribunal noted subsequent monthly payments to the Respondent.
8. When questioned as to why the Applicants had not lodged the tenancy agreement with the Respondent, Ms McLeod explained that the Respondent had refused to give them a written tenancy agreement. On being further questioned by the Tribunal she advised that they had asked the Respondent to supply them with a written tenancy agreement.
9. Ms McLeod went on to explain that they terminated the tenancy on 23 August 2022. The Respondent had indicated to them that she would repay their deposit of £800 to them. The Tribunal noted the Whats App messages between the parties which showed that the Respondent had so indicated. The

last message was dated 15 September 2022. Ms McLeod explained they heard nothing further from the Respondent. The Tribunal noted the letters from the three approved tenancy deposit scheme administrators all of which advised that their deposit was not held under an approved scheme in terms of Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011. Ms McLeod confirmed the deposit of £800 had not been returned to them by the Respondent.

Findings in Fact

10. The Applicants and the Respondent entered into a Private Residential Tenancy Agreement for the lease of the Property commencing 1 September 2022.
11. In terms of the agreement the Applicant agreed to pay £800 month rent to the Respondent. They made the first payment of rent of £800 to the Respondent on 1 September 2022.
12. The Applicants also paid £800 by way of a tenancy deposit to the Respondent on 1 September 2022.
13. The tenancy agreement terminated on 23 August 2022. The Applicants sought the return of the £800 from the Respondent at termination. The Respondent did not return the deposit of £800 to the Applicants.

Findings in Fact and Law

14. The Respondent did not provide the Applicants with a written tenancy agreement throughout the tenancy as she was required to do in terms of section 10 of the Private Housing (Tenancies) (Scotland) Act 2016
15. The Respondent failed to lodge the £800 deposit with an approved scheme administrator in terms of Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011.

Reasons for Decision

16. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the submissions made by Ms McLeod on behalf of both Applicants. The Tribunal found Ms McLeod to be credible and reliable and clearly explained the documentary evidence lodged in support of their application.
17. The Tribunal noted the contents of the Whats App messages between the parties together with the bank statements lodged. The Tribunal noted from the

bank documents lodged that a deposit payment of £800 had been made to the Respondent on 1 September 2021. The Tribunal noted that monthly payments of rent had been made from 1 September 2021 to the Respondent. The Tribunal was satisfied that parties had entered into a Private Residential Tenancy Agreement on 1 September 2022.

18. The Tribunal was satisfied on the basis of the submissions made by Ms McLeod, and on the basis of the Whats App messages lodged that the Respondent had failed to repay the £800 deposit to the Applicants at the tenancy termination. Further the Tribunal was satisfied that the letters lodged from the three approved scheme administrators which showed their deposit had not been lodged and protected throughout the period of the tenancy were indicative evidence that the Respondent had no intention of affording the Applicants any opportunity to have their deposit returned at the end of the tenancy.
19. The Respondent had been given an opportunity to appear before the Tribunal to dispute the Application. She did not do so. The Tribunal was satisfied on the basis of the documents, together with Ms McLeod's submissions that the order for payment in favour of the Applicants be granted.

Decision

20. The Tribunal granted an order for payment against the Respondent for £800.

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.

Shirley Evans

4 April 2023

Legal Member

Date