



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/20/0639

Re: Property at Flat 2, Lorne Court, 92 - 94 West Blackhall Street, Greenock, PA15 1XG (“the Property”)

Parties:

Miss Kimberley Nicholas, Flat 0/1, 130 Durmfrochar Road, Greenock, PA15 4JG (“the Applicant”)

Mr David McCrystal, Unknown, Unknown (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Payment in the sum of Four Hundred Pounds Sterling (£400) be made against the Respondent

Introduction

This application was heard at the same time as case reference FTS/HPC/PR/20/0637.

Application reference FTS/HPC/PR/20/0637 is an application for an order for payment where the landlord is alleged to have carried out duties in relation to tenancy deposits.

Application reference FTS/HPC/CV/20/0639 is an application for civil proceedings in relation to a private residential tenancy. Specifically, the application relates to the non-return of the tenancy deposit.

Service of the applications were unsuccessful upon the respondent following attempts by Sheriff Officers. Thereafter service by advertisement under Rule 6A was made upon the Chamber website in both cases. It is certified that the advertisements were

placed on the website on 30 July 2020. The advertisements remained for the necessary 14 days.

A Case Management Discussion (CMD) was fixed to take place in both cases by teleconference at 10.00 am on 3 September 2020.

The applicant, Kimberly Nicholas, is the former tenant. She joined the CMD and represented herself.

The respondent, Mr David McCrystal, is the former landlord. He did not participate in the CMD teleconference hearing.

Findings and Reasons

The property is Flat 2, Lorne Court, 92-94 West Blackhall Street, Greenock PA15 1XG.

The parties entered into a private residential tenancy which commenced on 18 March 2019. By mutual agreement the tenancy ended on 5 December 2019.

At the commencement of the tenancy, the applicant paid a tenancy deposit in the sum of £400 to the respondent.

The written lease fails to specify who the scheme administrator is in respect of the tenancy deposit scheme. Reference is made to the details "to be confirmed". No such confirmation was ever forthcoming.

Following vacation of the property the respondent obtained confirmation from the three tenancy deposit schemes in operation in Scotland that her tenancy deposit was not held in their schemes. This is confirmed in terms of emails dated 19 December 2019 from Safe Deposits Scotland and Letting Protection Scotland and an email dated 23 December 2019 from My Deposits Scotland.

The written lease fails to specify the respondent's landlord registration number. There are reasonable grounds for believing that he operated as an unregistered landlord which is an offence.

Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 requires a landlord to pay a tenancy deposit into an approved scheme within 30 days. On the basis of the documentary evidence, the Tribunal finds that the respondent failed in his duties.

The second application under FTS/HPC/PR/20/0639 is an application which seeks to recover the original tenancy deposit of £400. The applicant maintains that the condition of the property when she left it was the same as when she entered the property. There were no breakages. There would have been no justification for the respondent to retain any of the deposit. All keys were returned. The respondent has not challenged this. The applicant is entitled to return of her tenancy deposit.

The Tribunal relied upon the documentary evidence and the oral evidence and submissions of the applicant which were found to be credible and reliable. None of this has been challenged.

The applicant is entitled to the return of her original deposit. In terms of Regulation 10 the Tribunal must make an order against the respondent for an amount not exceeding three times the amount of the deposit.

The respondent does not appear to be a registered landlord. He has breached the Tenancy Deposit Regulations. He has failed to communicate with the applicant. He has not cooperated with this Tribunal process. No explanation has been provided regarding his actions. The Tribunal takes account of the fact that the decisions database of the Tribunal does not disclose any former decision made against the respondent.

The Tribunal takes into account that there are two applications which relate to the same subject matter. The Tribunal finds that it would be disproportionate and be an unjustifiable enrichment to the applicant to receive both an order for three times the amount of the original deposit and an order for the sum of the deposit itself.

Nonetheless the respondent's failures are serious and undermine public confidence in the private letting sector.

In all the circumstances in the Rule 103 application, an order for two times the tenancy deposit is fair and equitable and additionally an order should be made in the Rule 111 case in the sum of the deposit itself. This equates to a total sum being ordered against the respondent in the sum of £1,200 which represents, over both cases, a total of three times the tenancy deposit. Orders for these sums are accordingly made.

The First-tier Tribunal is under no obligation to report any unregistered or suspected unregistered landlords to the Local Council for the area the property is located in. In the circumstances, the Tribunal will refer the respondent to Inverclyde Council for investigation. The duty to report arises from Section 72 of the Private Housing (Tenancies) (Scotland) Act 2016.

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.



3 September 2020

Legal Member/Chair

Date