



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/PR/20/0736

Re: Property at 13 Knightsridge House, Watson Green, Livingston, EH54 8NA (“the Property”)

Parties:

Mr Stephen John Whitelaw, 108 Burnvale, Livingston, West Lothian, EH54 6DQ (“the Applicant”)

Ms Marie Simpson, 46 Neilston Road, Uplawmoor, Glasgow, G78 4AF (“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”) dismisses the application and makes no order.

INTRODUCTION AND BACKGROUND

This case was heard at the same time as case referenced FTS/HPC/PR/20/0734.

An initial Case Management Discussion (CMD) took place by teleconference on 19 August 2020 at 10.00 am. The applicant, Mr Stephen Whitelaw, did not join that earlier teleconference. Attempts were made on the day to contact the applicant by telephone, but this was unsuccessful. The CMD proceeded. The respondent was represented by both Adrian Kay and Shirley Hepworth of Almond Valley Property Centre.

Both applications were continued for further consideration. The fresh CMD was heard on 17 September at 10 am. The hearing had been intimated to the applicant by both email and recorded delivery. He again did not participate. The Tribunal was satisfied that there was no barrier to his participation. The respondent was again represented by both Adrian Kay and Shirley Hepworth of Almond Valley Property Centre.

FINDINGS AND REASONS

The property is 13 Knightsridge House, Watson Green, Livingston EH54 8NA.

The applicant, Mr Stephen Whitelaw, is the former tenant. The respondent, Ms Marie Simpson, is the former landlord.

The parties entered into a private residential tenancy which commenced on 10 October 2019. The rent was stipulated at £675.00 per calendar month and a deposit was paid in the sum of £675.00.

The lease was arranged on behalf of the respondent by her letting agents, Almond Valley Property Centre.

The lease states that the deposit was to be held with Letting Protection Service Scotland.

The applicant raised a number of issues regarding the state of repair of the property. Within a fairly short period of time, after taking up occupation, he provided notice of his intention to leave as a consequence of which the lease ended on 27 December 2019.

The first application referenced FTS/HPC/PR/20/0734 is an application made under Rule 103 and The Tenancy Deposit Schemes (Scotland) Regulations 2011. Regulation 3 requires the applicant to pay the respondent's deposit into an approved scheme within 30 days. In the event of the respondent breaching the Regulations, the Tribunal must make an Order against the respondent for an amount not exceeding three times the amount of the deposit in terms of Regulation 10.

There is no doubt that the deposit in the sum of £675.00 paid by the respondent to the applicant was paid to Letting Protection Service Scotland. The applicant himself produced an email sent to him by that organisation on 13 December 2019 which confirms this.

However it is accepted on behalf of the respondent that the deposit was paid into the scheme late and outwith the required 30 days in terms of the Regulations. An explanation has been provided. The error was caused due to an administrative failure. There was no fault attributable to the respondent herself. Her letting agents, Almond Valley Property Centre had been using a new computerised system which had failed on this particular occasion. No loss has been suffered by the applicant as a consequence. The applicant is a registered landlord. She is known to otherwise abide

by all necessary requirements incumbent on a commercial residential landlord and Almond Valley Property Centre are a reputable company who is fully aware of the requirements under the Regulations and does comply with them. As soon as the error was identified it was rectified but inconvenience to the applicant was caused.

The applicant has failed to advance his application further after lodging it. He did not participate in the first CMD on 19 August 2020. Despite this further CMD having been intimated to him he has, again, failed to engage in the process.

Regardless of the applicant's lack of apparent desire to pursue matters, the terms of Regulation 10 are quite clear. There is an obligation placed upon the Tribunal which is mandatory in nature. In the event of the Regulations being breached, the Tribunal must make an Order against the respondent for an amount not exceeding three times the amount of the original deposit. In this particular case there are compelling mitigating factors. Additionally the applicant is not pursuing his application further.

In the circumstances it is fair, equitable and proportionate that the Order is restricted to one times the amount of the original tenancy deposit which is in the sum of £675.00. An Order is made in that restricted sum. It would be expected that the Order which is made against the respondent personally will be met by Almond Valley Property Centre. The representatives participating in the conference call confirmed that this would be the case.

The applicant's second application referenced FTS/HPC/PR/20/0736, when made in writing, was said to be under Rule 47. This would have no application to his claim and has been treated as an application in terms of Rule 111 and Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016.

In this second application the applicant seeks an Order for Compensation in the sum of £350.00. His claim is based upon two alleged issues. Firstly, due to the lack of cooking facilities as the oven was not working and secondly due to the cold conditions in the property.

The Tribunal noted oral evidence from Mr Kay in relation to these issues. This evidence was found to be credible and reliable and weight was attached to it. The evidence is unchallenged.

The cooker and oven were in good working order. The only issue is that the markings around the dial to operate the oven had worn off, commensurate with normal wear and tear. It would have been easy to identify an appropriate temperature to cook food however. There is no merit in this complaint. The heating system was operative. It is electric storage heating. The applicant was shown how to operate the system on more than one occasion. He did not understand that storage heaters do not provide instant high levels of heat. There is no merit in this complaint.

The applicant did not suffer loss. He is not entitled to compensation.

The application seeking compensation is dismissed for want of insistence and due to there being no basis for the applicant's complaints.

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.

Richard Mill

17 September 2020

Legal Member/Chair

Date