



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 (1) of the Private Housing (Tenancies)(Scotland) Act 2016.**

**Chamber Ref: FTS/HPC/CV/20/1256**

**Re: Property at 2 Sorbie Farm Cottages, Ardrossan, KA22 7NP (“the Property”)**

**Parties:**

**Miss Rhona Morrison, Flat 0/2, 11 Beaconsfield Road, Glasgow, G12 0PJ (“the Applicant”)**

**Mr Alan Hogarth, Sorbie Farm, Ardrossan, KA22 7NP (“the Respondent”)**

**Tribunal Members:**

**Karen Kirk (Legal Member)**

1. This Hearing was a Case Management Discussion (hereinafter referred to as a “CMD”) fixed in terms of Rule 17 of the Procedure Rules and concerned an Application for civil proceedings under Section 71 (1) of the Private Housing (Tenancies)(Scotland) Act 2016. The purpose of the Hearing being to explore how the parties dispute may be efficiently resolved. The purpose of the hearing was explained and it was understood a final decision could be made. The hearing took place by teleconference due to the covid-19 pandemic.

**2. Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £550 should be made.**

**3. Attendance and Representation**

The Applicant was present and unrepresented.

The Respondent was present and unrepresented.

**4. Preliminary Matters**

There were no preliminary matters raised.

## **5. The Case Management Discussion**

- The Applicant set out her position for the purpose of the CMD and said the initial deposit was £550 and this was made on 8<sup>th</sup> May 2019. This was she said prior to the commencement of the tenancy on 1<sup>st</sup> June 2019 and paid to the Respondent by bank transfer. The Applicants position was that the Respondent did not return the deposit following the end of the tenancy in February 2020. The Applicant referred to text messages lodged which said that the deposit would be put into an approved scheme and that the monies were a deposit.

The Respondent said initially the amount of money paid by the Applicant on 8<sup>th</sup> May 2019 was a holding fee as he had wanted to rent the property out from 1<sup>st</sup> May 2019 and the tenancy did not start to the 1<sup>st</sup> June 2019. He said that the Applicant owed gas monies for a calor gas delivery to the property on 27<sup>th</sup> January 2020. However the Respondent later in the discussion referred to the tenancy agreement between the parties which states that the deposit for the property was £550 then changed his view and adopted the position that if the tenancy agreement said that it was a deposit then he would accept it was a deposit. He said it had not been returned and wished to make submission about gas monies he said were to him by the Applicant. He said he ahd not pursued this and would now need to do this.

## **6. Agreed Facts**

- Both parties agreed the Tenancy commenced on 1<sup>st</sup> June 2019.
- Both parties agreed the Tenancy Agreement referred to a deposit of £550 to be paid for the property.
- Both parties agreed the amount of £550 paid by bank transfer on 8<sup>th</sup> May 2020 was a deposit.
- The Respondent has not returned same to the Applicant.

## **7. Reasons for Decision**

1. Rule 17 of the Procedure Rules provides that a Tribunal can do anything at a CMD which it may do at a Hearing, including making a decision. The Legal Member was satisfied that the Tribunal had everything before it that it would require in order to make a decision having regard to the Overriding Objective. The sufficiency of facts agreed by parties allowed a decision to be made. No further evidence not already before the Tribunal was referred to by parties.
2. The Tenancy Agreement contains a clause explaining a deposit of £550 for the property was to be paid. The Applicant paid this amount by bank transfer before the commencement of the tenancy in June 2020. This amount was acknowledged in text messages between the parties. At the Hearing the Respondent conceded the monies were a deposit.

3. The FTT was satisfied that the Respondent had not returned the deposit and had failed to meet his responsibilities regarding the deposit in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011.
4. The FTT being satisfied that the deposit had not been returned made an order of payment in favour of the Applicant for £550.

### **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.**

A black rectangular redaction box covers the signature of the Legal Member/Chair. The redaction is positioned above the text 'Legal Member/Chair'.

**Legal Member/Chair**

**18.8.2020**  
**Date**