



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014**

**Chamber Ref: FTS/HPC/CV/20/1557**

**Re: Property at 40 Pennelton Place, Bo'ness, EH51 0PE (“the Property”)**

**Parties:**

**Mr Thomas Thomson, Mrs Miriam Thomson, 108 Burnside Crescent, Rosyth, Dunfermline, KY11 2NT (“the Applicant”)**

**Ms Leanne Kenna, 179 Bowhouse Road, Grangemouth, FK3 0EX (“the Respondent”)**

**Tribunal Members:**

**Jan Todd (Legal Member) and Elizabeth Dickson (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of £2595.18**

**1. Background**

1. This was a hearing fixed to consider an application dated 17<sup>th</sup> July 2020 by the Applicants Mr Thomas Thomson and Mrs Miriam Thomson for an order for payment of initially £2,975, which was then amended to increase it to £3190.18 in respect of rent arrears they were claiming were due from the tenant Ms Leanne Kenna.
2. The following papers were lodged with the application:-
  - a. Copy of Tenancy Agreements between the Applicant and Respondent dated various dates between March 2012 and November 2016
  - b. A rent statement.
  - c. Correspondence between the parties
3. Prior to the CMD the Tribunal had sent a Direction to the Applicant asking for :-

- a. The Date the tenancy came to an end
  - b. If the deposit lodged had been repaid and credited to the rent account
  - c. And an up to date rent statement showing any deposit repaid.
4. The Applicant's representative Northwood letting agents submitted two written responses the first on 5<sup>th</sup> October, contained copy e-mails to and from the tenant asking for payment and advising the Landlords would be looking to raise two actions with the Tribunal including one for eviction and one for rent arrears. The tenant had responded with claims of finding the situation stressful; wanting to address the arrears but claiming to have paid over 3 times the rent as a deposit initially. She also offered in an e-mail of 29<sup>th</sup> July to pay the arrears at £50 per month which Northwood Central the Applicants letting agents refused claiming this was not enough given the level of the arrears. Further e-mails lodged show that after the tenant moved out, the landlords visited the Property were unhappy at the state of it and Northwood advised the tenant the landlord would be making a claim for the cost of missing items, cleaning and damage to the Property.
5. The Respondent has also made written submissions to the Tribunal. The Respondent's representative is Mr Robert Griffith a debt advisor with Falkirk Council who wrote on 8<sup>th</sup> October confirming his appointment and enclosing a written statement by Ms McKenna dated 7<sup>th</sup> October. In this the Respondent claims that she was asked by Key Place for 3 times the rent as a deposit because she was on benefits at the time and the landlord would require a larger deposit because she was on a low income and she advised she had to borrow the money from 2 relatives to secure the deposit. She claims the Property was not left unkempt or untidy and that there were issues with the Property throughout the lease. It is noted that in e-mails to the applicant's representative the Respondent advises Falkirk Council have a receipt for the deposit with her copy of the lease.
6. In the Applicants further response sent to the Tribunal on 15<sup>th</sup> October they advised the tenancy had started on 30<sup>th</sup> September 2011 and they took over Key Place properties in November 2019. The representative noted however that the only deposit recorded by Key Place was the sum of £595 and lodged a print showing this deposit. They also lodged a print out from Safe deposit's Scotland showing one month's rent was deposited namely £595 on 10<sup>th</sup> December 2012. They disputed the tenant's written submission that she had in fact paid in cash 3 times the rent namely £1785 and paid that to Key Place when she took possession of the flat. Northwood called upon Ms McKenna to show a receipt or other evidence of such payment. They also mentioned the respondent was often late in paying her rent and confirmed that she had offered to make a payment plan for the arrears (of £50 per month) but had failed to provide details of her financial situation so that Northwood could consider such a payment plan.
7. At the end of the CMD the following issues were identified:-

The main issue is the amount of deposit paid by the Respondent to the Applicants' then agents, Key Place. The Respondent was alleging she has paid £1785 representing 3 times the amount of the monthly rent.

The Applicant denied that and had lodged a copy of the receipt from Key Place and the certificate of deposit showing only the sum of £595 was lodged.

8. The hearing was then fixed to establish what amount if any of the rent is due and outstanding and the Tribunal required the following from the parties in advance of the hearing :-
  - a. From the Applicants an up to date rent statement to amend the sum claimed to £3190.18
  - b. For the Applicant to show evidence that the deposit lodged of £595 has been awarded to the landlords in respect of damage to the Property.
  - c. For the Respondent to lodge any evidence to support her claim that 3 times the rent was paid as a deposit including any receipt or other written evidence.
  - d. For both parties to consider and advise the Tribunal what witnesses they wish to bring to the Hearing and to advise the name and e-mail or address of those witnesses.
  - e. All evidence or note of witnesses have to be lodged at least 7 days prior to the date of the Hearing which will be advised in early course to both parties.

Prior to the hearing the Applicant confirmed and lodged confirmation that they received the deposit of £595 back from Safe Deposit (Scotland) Ltd but that there was no adjudication as the Respondent did not oppose the release of the deposit and so there was no finding as to what the deposit was released. However the e-mail from Safe Deposit Scotland states "reason: deposit claim is well above amount due, arrears of £3190.18 along with deep cleaning, various damages to property and building, stolen missing items from the property, removing left items/rubbish by tenant gas and electric left in debt."

Both parties have lodged photographs and in one case a video showing the state of the Property at the end of the tenancy.

## **2. The Hearing**

9. The Hearing was held by teleconference on 16<sup>th</sup> December at 10am due to the continuing need for social distancing. The legal member opened the Hearing by making introductions and advising on the purpose of the Hearing and how the proceedings would be conducted especially considering they were being conducted by teleconference.
10. The Applicant's agent Mrs Anne Johnstone was in attendance on the call, with both Mr and Mrs Thomson the Applicants. Ms Lisa Allen another employee of Northwood Central and Mr Robert Young joined at different times during the Hearing as witnesses for the Applicants. The Respondent was also present as was her representative Mr Robert Griffith of Falkirk Council.
11. The Legal Member started with the issue identified at the CMD of whether the repayment of the sum of £595 from Safe Deposit Scotland should be taken as paid in respect of a claim for damage or cleaning of the Property as the applicant had submitted or whether it was not clear what it was paid for and therefore should be deducted from rent arrears sought.
12. Mrs Johnstone argued that the claim had been primarily made by Northwood for cost of cleaning and damage to the Property but acknowledged that the rent arrears had been mentioned on the form filled out to reclaim the deposit.
13. Ms Kenna denied receiving any notification from the Deposit Company but admitted that she had received notification from the letting Agent that they would be claiming money but she thought that was for rent arrears and indeed she thought the full amount of the deposit (which she is claiming is £1785 being 3 x the monthly rent) would go towards the rent arrears.
14. Ms Allen was then asked to join the call so the Tribunal could ask her questions about a handwritten note on a Tenant Statement dated 1<sup>st</sup> October addressed to Ms Kenna and lodged with the Tribunal by the Applicants in support of their claim which says "Claim made for deposit of £595 –awaiting the response by 12/10/20 if awarded arrears will be £2595.18." Ms Johnstone confirmed this note was made by Ms Allen. Ms Allen advised that she thought the claim to the Deposit Company was made for damages to the Property but could not explain if that was the case why she would have written this statement on the Tenant Statement of Arrears.
15. Both parties in their written correspondence are disputing the cleanliness and state of the property at the end of the tenancy and Ms Kenna does not accept that damages are due to be paid by her.

16. The Tribunal then explored the matter of how much rent had not been paid. Ms Johnstone confirmed that the amount the Applicants were seeking was £3190.18 which is for rent due to 10<sup>th</sup> August when the Applicants accept the Respondent had left the Property and the tenancy was ended. The Rent due in terms of the leases lodged, which have continued since September 2011, is £595 per month. The Rent statement of 1<sup>st</sup> October shows this amount due and shows that rent was paid to date up to end of 2019. It also states that a part payment of £150 was made for rent due on 30<sup>th</sup> December 2019, a further payment of £345 paid on 28<sup>th</sup> January and one further payment made of £695 on 7<sup>th</sup> February 2020. No further sums are shown as paid until the tenant left on 10<sup>th</sup> August 2020.

17. The Respondent has not challenged the amounts shown in this rent statement when asked she confirmed that the last payment she had made was £695 in February but stated that she believed that the actions of Ms Johnstone in allegedly refusing to give her a reference may have contributed to a delay in her getting accommodation from Falkirk Council and therefore she feels aggrieved and does not believe further rent should be due. She also admitted however that she did make an offer to pay the arrears by £50 a month but this had not been accepted.

18. The matter of how much deposit had been paid by Ms Kenna was then explored. Ms Kenna has consistently put forward the view that she had paid 3 months' worth of rent as a deposit at the start of the tenancy and that she had to borrow money from relatives to pay this amount to secure the tenancy. She has lodged 3 letters in support of this view from 3 former employees of Key Place the original letting agent who dealt with the tenancy when she entered into it.

The 3 letters are from Rose Patrick, Karen Cleland and Laura Bell. It was accepted by both Ms Johnstone for the Applicants and Mr Young who was the manager of Key Place when he came on to give evidence, that these 3 people were indeed employees of Key Place at the time the Respondent became a tenant at the Property.

19. The letters all confirm that it was a practice at the time that anyone on unemployed or on benefits would have to pay 3 months' rent in advance. Ms Rose Patrick confirmed that Ms Kenna did pay that amount although she cannot remember whether the rent was £550 or £600 she confirms that "She had to pay and did pay 3 months' rent in advance for 40 Pennelton Place Bo'ness by law as she was unemployed at that time."

20. Ms Karen Cleland was the manager at Key Place at that time and also confirms that "during 2011 we received 3 months' rent upfront and a guarantor if housing benefit applicant"

21. Ms Laura Bell confirms that it was practice at that time that anyone unemployed or receiving benefits would be required to pay 3 months' rent upfront before taking on the property.
22. Ms Kenna's position is that this was not in her view paid as rent but as a deposit and she feels she is entitled to not just one month's rent which has been lodged with a tenancy deposit scheme, but the three months' rent paid to be deducted from any arrears.
23. The Applicants then called Mr Young as their witness and Mr Young called in to the teleconference and explained that he was the manager of Key Place at the time. He confirmed that in fact the practice was to ask for 4 months' rent in advance – one month was taken as a deposit and the other 3 were used to pay for the first three months' rent as it would take that time for the benefits to be processed for the tenancy from Falkirk Council. When asked if this was just the normal practice or whether he was speaking about this account in particular he confirmed it was both. He also responded to questions from the ordinary member of the Tribunal and Ms Kenna, confirming on each occasion that he was absolutely sure that Key Place received in total 4 months' worth of rent in advance; one month of which was for the deposit and 3 months were paid to the Applicants as rent for the first three months.

Under questioning about why an unsigned Deposit statement showed one rent month paid in advance and one month deposit he explained that that would be the normal practice if someone was not on benefits but that is not what happened in this case.

24. Ms Kenna reiterated her position that she thought the money she had paid was three months only and was all for a deposit. Mr Griffiths explained that he had tried to find a receipt for this money to clarify it was a deposit from Falkirk Council but the records do not go back this far. He however stated that he believed Ms Kenna.

### **3. Findings in Fact**

25. The Respondent entered into a lease of the Property from the Applicants which commenced on 30<sup>th</sup> September 2011 and thereafter on a monthly basis.
26. The Rent due in terms of the lease was £595 monthly payable in advance.
27. The tenancy has ended on 10<sup>th</sup> August after the tenant left the Property after being served a Notice to Quit
28. The Respondent failed to pay any rent due from February 2020.

29. The rent outstanding as at 10<sup>th</sup> August 2020 is £3190.18.
30. No further payments have been made towards the rent.
31. A Deposit of £595 was made at the start of the tenancy and was lodged some time later in a tenancy deposit scheme as the scheme was not in force at the start of the tenancy
32. The Deposit of £595 has been successfully claimed by the Applicants but it is not clear the deposit was awarded solely for damage to the Property.
33. The Tenant did make a payment of three times the rent at the start of the tenancy and this has been used to pay the first three months' rent to the Applicants.

#### **4. Reasons for Decision**

34. The parties were in agreement that the Property was let to the Respondent by the Applicant since September 2011, that the rent is £595 and that no further payments of rent were made after February 2020. The total unpaid was not challenged by the Respondent and is correctly calculated as £3190.18.
35. The Respondent's main challenge was that she believes that she paid three times the rent namely £1795 at the start of the tenancy and this was as a deposit and not advance rent for the first three months. She was adamant in her view on this and had suggested there was a receipt for this lodged at some point with Falkirk Council. Mr Griffiths confirmed no receipt could be found but that he believed his client.
36. The Applicant's response to this is simply that there would have been three months' rent paid but this was as a matter of practice at the time requested from anyone who was unemployed and claiming benefits and was used to pay the landlords the first three months' rent, not used as a deposit.
37. The Tribunal heard from Mr Young who was the manager of the letting agent Key Place who dealt with the Respondent at the time the lease was entered into. Mr Young spoke clearly and credibly explaining that in actual fact there had been four months or rent paid in advance by Ms Kenna, one month for the actual deposit held initially by Key Place then put into Safe Deposit Scotland when the deposit schemes commenced, the other three months' rent paid out to the landlords Mr and Mrs Thomson when due.

38. Ms Kenna and Mr Griffiths had submitted the 3 letters referred to above which confirmed that the practice was to take 3 months' rent in advance and that this did happen with Ms Kenna in respect of this lease.
39. The Tribunal finds that it is clear there is no dispute that Ms Kenna paid at least 3 months' worth of rent in advance when she entered into the lease.
40. The question for the tribunal to determine is whether this was payment of a deposit that should then be returned to her at the end of the lease or credited to the rent account or were they an advance payment of rent.
41. From both Mr Young's evidence and that of the 3 former employees it is seems clear that this was a standard practice used at the time for tenants like Ms Kenna who were going to rely on benefits to pay their rent and that it was exactly that rent paid in advance.

This view is clearly supported by the clear and credible evidence of Mr Young but also by the reference in the copy leases enclosed with the application that the deposit is £595, and the fact that this is the amount lodged with Safe Deposit Scotland.

The Tribunal found Ms Kenna fully credible in her statement that she has paid three months' rent to Key Place, but finds it more likely for the reasons given above and the wealth of evidence from all 4 employees of Key Place, that this was indeed rent paid in advance for the first three months while a benefit application was being processed. It is possible that Ms Kenna does not fully remember or has misunderstood what this money was paid for.

42. The only other matter for the Tribunal to determine is whether the Applicant is entitled to assume the sum successfully claimed from Safe Deposit Scotland was awarded for damages or other expenses other than rent arrears. The Tribunal finds that given that this has not been adjudicated on by the Tenancy Deposit Company; that in their letter repaying it they mention rent arrears as one of the heads of claim; and crucially that in their own rent statement Ms Allen of Northwood Central has confirmed that, if successful, the amount of the deposit would reduce the rent arrears, that therefore the deposit should in fact be deducted from the rent arrears claimed.

The Applicants if they so wish can raise a separate claim for damages or cleaning against the Respondent who has in her written responses indicated she does not agree she is liable for this. This Tribunal was to consider the application for rent arrears and it is not appropriate or fair for it to consider in detail any claim for damages.



## 5. Decision

Given the sum claimed is £3,910.18 and having deducted the deposit sum of £595 the Tribunal finds the amount of £2,595.18 is due as rent by the Respondent to the Applicant.

### 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.

**Jan Todd**

**16<sup>th</sup> December 2020**

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Legal Member/Chair

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Date