



**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/21/0870**

**Re: Property at 18B Lansdowne Crescent, Edinburgh, EH12 5EH (“the Property”)**

**Parties:**

**Lewis James Johnstone, Miss Romane Moulin, 39/1 Bryson road, Edinburgh, EH11 1DY (“the Applicants”)**

**Dr William Philips, 18 Lansdowne Crescent, Edinburgh, EH12 5EH (“the Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member) and Ms J Heppenstall (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted in favour of the Applicants in the sum of £300.**

**Background**

1. This is an application received in the period between 12<sup>th</sup> and 29<sup>th</sup> April 2021, made in terms of Rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”) seeking an order for payment in the sum of £1020. The Applicants included with the application a copy of the private residential tenancy agreement between the parties, which tenancy commenced on 26<sup>th</sup> February 2020 at a monthly rent of £960, copy cheque from the Respondent, copy correspondence from the Respondent, and email correspondence between the Applicants and a letting agent appointed by the Respondent.
2. On 31<sup>st</sup> May 2021, the Respondent made written representations and lodged productions.
3. A Case Management Discussion (“CMD”) took place by telephone conference on 14<sup>th</sup> June 2021. The matter was set down for a hearing.

4. A Hearing took place on 9<sup>th</sup> August 2021 by telephone conference. Due to technological issues, the hearing was adjourned and set down for a further hearing to take place by video conference.

### **The Hearing**

5. A hearing took place by video conference on 9<sup>th</sup> November 2021. The Applicant, Ms Moulin was in attendance. The Applicant Mr Johnstone was not in attendance, and Ms Moulin confirmed that he would not be attending due to work commitments. The Respondent was in attendance.
6. The Tribunal considered the terms of Rule 29. The Tribunal determined that Mr Johnstone had been given reasonable notice of the time and date of the hearing and that the requirements of Rule 24(1) had been satisfied and it was appropriate to proceed with the application in the absence of Mr Johnstone.

### **The Applicants' position**

7. Ms Moulin said she and Mr Johnstone moved into the Property on 26<sup>th</sup> February 2021, having paid one month's rent and a deposit of £960. The following day she disclosed to the Respondent that she had a cat, which was in breach of the tenancy agreement. The Respondent said she must either get rid of the cat or leave the Property. The Applicants sent an email to the Respondent on 1<sup>st</sup> March 2021 stating that they would leave and expected to pay one week's rent. There was no response from the Respondent. The Applicants moved out on 5<sup>th</sup> March 2021, one week after the tenancy commenced. There was a checkout inspection at this time, with all parties present, but Ms Moulin could not remember what had been said between parties at that time. There had been some discussion by telephone with the Respondent and she understood he was agreeable to the notice period for leaving being reduced, and that he would refund the three weeks' rent for the period after they left. This agreement was not provided to the Applicants in writing. Responding to questions from the Tribunal, Ms Moulin said the Applicants moved out as they wished to have a settled home and to be accommodating towards the Respondent.
8. The Applicants became aware that the Property was advertised for let three days later, and the advertisement stated that the Property was available for let on 8<sup>th</sup> March 2021. It was Ms Moulin's position that this indicated that the Respondent had agreed to the notice period being reduced, and to returning the rent for the three weeks that they did not occupy the Property. Had he wished to hold them to the 28 days' notice and retain the full month's rent, he ought not to have stated in the advertisement that the Property was available for let within the notice period. It was not fair to state that the Property was available during a period for which the Applicants were being charged rent.
9. The Applicants attempted to make contact with the Respondent by telephone and email to discuss matters. Ms Moulin was clear that she had told the

Respondent she would leave early if she could recover her three weeks' rent, or she would stay for 28 days. The Respondent had given her the impression that she would get her money back. He had used words to the effect of 'I'll do what is fair.' There had been no response to emails. The Applicants attended at the Property on one occasion to collect mail, including a new bank card. The Respondent was present but did not answer the door, and he closed the blinds. The Applicants cancelled the bank card.

10. A month after leaving the Property, the Applicants received a cheque for £650.20 from the Respondent. He had not returned the three weeks' rent and he had deducted £300 from the deposit. Ms Moulin said she had been under the impression that the Respondent would refund the three weeks' rent and the full deposit. Referring to the three weeks' rent, she said she thought the Respondent was 'under every right to keep the money', but the fact that he was happy to rent the Property out from 8<sup>th</sup> March onwards indicated he had agreed to refund the money.
11. It was Ms Moulin's position that the fee deducted from the deposit was an illegal fee and should not have been deducted. Ms Moulin said the deposit had not been lodged with an approved tenancy deposit scheme, which meant there was no adjudication, but she understood that was allowable within the relevant regulations, given the timescale involved.
12. The Applicants tried to get the assistance of the letting agent to recover the money, but the letting agent said they would have to liaise with the Respondent.
13. Responding to questions from the Tribunal regarding clause 23 of the tenancy agreement and the provision that any departure from the normal notice period must be in writing, Ms Moulin said she had not been aware of that at the time. Had she realised the Respondent was not in agreement to the Applicants leaving early, she would have stayed for the notice period.

### **The Respondent's position**

14. The Respondent clarified that the Property was let again on 24<sup>th</sup> April 2021.
15. The Respondent said he made no threats in regard to having to end the tenancy because the Applicants had a cat. He did not agree to refund the full deposit. There was a discussion at the front door of the Property between the Respondent and Ms Moulin. She said she wanted to leave and have the deposit returned. The Respondent gave no undertaking to return any funds. He was not sure of the position and did not wish to commit to anything without discussing matters with the letting agent. He did not recall discussing the matter during any telephone calls. The Respondent said he had made his position clear and he felt he was being harassed by the Applicants with calls and visits.

16. The Respondent said he was justified in advertising the Property for let, and the tenancy agreement provides that tenants will allow viewing of the Property before the expiry of the notice period.
17. The Applicants left without providing a forwarding address. The Respondent marked their mail to be returned to sender.
18. The deposit could be lodged up to 30 days after commencement of the tenancy, and the Applicants left before the period had expired.
19. Responding to questions from the Tribunal regarding the letting agent's fee of £300, the Respondent referred to the email from the letting agent dated 2<sup>nd</sup> March 2021, whereby the letting agent stated they were making the charge due to the background work entailed in setting up the lease and the charges they had incurred. It was the Respondent's position that he was entitled in terms of clause 36(c)(ix) of the tenancy agreement to deduct any other costs arising the Applicants' failure to fulfil the conditions of the Agreement. The Applicants had failed to give proper notice that they were leaving. Responding to questions from the Tribunal as to the letting agent's justification for making this charge, the Respondent said there had been no further discussion other than the contents of the mail. He relied upon the email as justification for withholding the sum from the tenancy deposit. The Respondent said it was the first time he had dealt with this particular letting agent. In his previous dealings with letting agents, there had never been any such charge when tenants chose to leave. He said he would return the sum of £300 to the Applicants.
20. The Respondent said he did not recall any discussions with the letting agent about returning the three weeks' rent to the Applicant's.
21. The Respondent said he was not responsible for stating on the advertisement that the Property would be available on 8<sup>th</sup> March 2021. He instructed the letting agent to put it on the market. In any event, the next tenant did not move in until the following month.
22. It was the Respondent's position that parties had entered into a legal agreement and ought to have 'stuck to the letter of the law'. It is not for parties to decide which clauses of a legal agreement they wish to adhere to. He kept within the terms of the legal agreement.

### **Findings in Fact and Law**

23.
  - i. Parties entered into a private residential tenancy agreement in respect of the Property that commenced on 24<sup>th</sup> February 2021 at a monthly rent of £960.
  - ii. A tenancy deposit of £960 was paid by the Applicants to the Respondent at or before the start of the tenancy.

- iii. The Applicants left the Property on 3<sup>rd</sup> March 2021.
- iv. There was no written agreement from the Respondent, as required by clause 23 of the tenancy agreement, that he agreed to waive the period of notice.
- v. In the absence of any written agreement to waive the period of notice, the Respondent is entitled to retain the sum of £720 rent paid by the Applicants for the first month.
- vi. The Respondent was not entitled to deduct the sum of £300 from the tenancy deposit.

### **Reasons for Decision**

24. The Tribunal did not make any findings as to whether there was a verbal agreement between the parties to the effect that the notice period could be waived. On the evidence before the Tribunal, it seemed possible that the situation had arisen due to miscommunication between the parties. Neither party present had good recall of the exact content of the discussions that took place. The Tribunal noted that Ms Moulin referred to having 'got the impression' that the three weeks' rent money would be returned, which seemed to suggest a lack of definite agreement. In any event, the tenancy agreement requires at clause 23 that any such agreement be put in writing by the Landlord, and this did not happen. The Tribunal considered that the Respondent was entitled to retain the full month's rent.
25. The Tribunal considered that the Respondent was not entitled to retain the sum of £300 from the tenancy deposit. In order to rely on clause 36(c)(ix) of the tenancy agreement, the deduction by the letting agent would require to have been legitimately made, and the Tribunal was not persuaded that the letting agent was entitled to make this charge. In terms of the tenancy agreement, a tenant is entitled to give 28 days' notice without being charged for any work carried out by the letting agent to put the tenancy agreement in place. The Respondent did not agree to waive the notice period, and retained the full month's rent. There was no clear legal justification before the Tribunal for the making of this charge. The Tribunal also noted that the Respondent was in agreement to repaying the sum to the Applicants

### **Decision**

26. An order for payment is granted in favour of the Applicants in the sum of £300.

## **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.**

**Helen Forbes**

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**Legal Member/Chair**

**9<sup>th</sup> November 2021**  
**Date**