



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

**Chamber Ref: FTS/HPC/CV/21/1026**

**Re: Property at 108 Stratford Street 2/2, Glasgow, G20 8SF (“the Property”)**

**Parties:**

**Mr Tom O'Hara, 2A Greystone Place, Strathaven, ML10 6NZ (“the Applicant”)**

**Mr Alan Liangbiao Hu, 4 Kelvindale Place, Glasgow, G20 8BU (“the Respondent”)**

**Tribunal Members:**

**Andrew Cowan (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the sum of £360.00 was lawfully due by the Respondent to the Applicant, and granted and order for payment of that sum.**

**Background**

1. By an application dated 26<sup>th</sup> April 2021 (“the application”), the Applicant sought an order for payment of £360.00 from the Respondent. The sum claimed by the Applicant was the amount paid by him to the Respondent by way of a deposit, in relation to his previous occupancy of the property. The application was submitted to the Tribunal under rule 111 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules and Procedure 2017 (“the procedure rules”).
2. A copy of the application, along with a letter from the Tribunal giving details of a proposed Case Management Discussion, was served upon both the Applicant and the Respondent.

### The Case Management Discussion (“CMD”)

3. A CMD took place by telephone conference on 23<sup>rd</sup> June 2021.
4. The Applicant did not join the CMD call. He was represented at the CMD by his mother Mrs Nikki O’Hara.
5. The Respondent joined the conference call. At the start of the CMD the Tribunal sought to ascertain whether the Respondent was able to follow and understand the discussion at the CMD, given that English was not the Respondent’s first language. The Tribunal raised with the Respondent whether he would prefer the support of a translator. The Respondent confirmed that, whilst English is not his first language, he was able to understand and follow proceedings and he did not wish to seek the support of a translator. The Respondent also acknowledged that he received the application and the associated papers.
6. At the CMD the Tribunal was able to consider:
  - a. The application.
  - b. The copy Tenancy Agreement between the parties dated 26<sup>th</sup> August 2020.
  - c. Copy correspondence from the Applicant’s representative to the Respondent seeking return of the deposit paid by the Applicant in the sum of £360.00.
7. The Respondent confirmed to the Tribunal that he had taken a deposit of £360.00 from the Applicant at the time the parties had entered into a tenancy agreement for the property in August 2020. The Respondent further confirmed that he accepted that the tenancy had terminated on or around the 28<sup>th</sup> of November 2020. The Respondent confirmed that after that date he had re-let the property to another party.
8. The Respondent did not seek to argue that he was required to repay to the Applicant the sum of £360.00. The Respondent’s main concerns were in relation to an earlier decision of the Tribunal under case reference (FTS/HPC/PR/21/0074) in which the Respondent had been ordered to pay the sum of £1080.00 to the Applicant (following the failure of the Respondent to lodge the deposit with a Tenancy Deposit Scheme). The Respondent’s position was that he was willing to repay the Applicant the sum of £360.00 (being the deposit previously taken at the start of the tenancy) provided he was also not required to pay the sums due following the decision of the Tribunal in the case concerning his failure to lodge the deposit with a Tenancy Deposit Scheme.
9. The Tribunal explained to the Respondent, on a number of occasions, that the decision of the Tribunal granted under case reference PR/21/0074 was not a matter which was within the jurisdiction of this Tribunal hearing. This Tribunal was not able to interfere with the decision of the Tribunal from that earlier case.

Whilst the Respondent appeared to accept this explanation by the Tribunal, he continued to argue that that earlier decision was wrong.

10. Notwithstanding the Respondent's concerns regarding the earlier decision of the Tribunal in relation to his failure to lodge the deposit with a Tenancy Deposit Scheme, the Tribunal were satisfied that the findings in fact (undernoted) were agreed between the parties.
11. Under rule 17(4) of the schedule to the First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (the Procedure Rules) the First-Tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision. The Applicants asked the Tribunal to grant an order for payment against the Respondent for the sum of £360.00.

### Findings and Fact

12. The Respondent let the property to the Applicant in terms of a written Tenancy Agreement dated 26<sup>th</sup> August 2020.
13. As part of the terms of the tenancy agreement between the parties the Applicant paid to the Respondent the sum of £360.00 by way of a deposit.
14. The tenancy between the parties terminated on or after the 28<sup>th</sup> of November 2020.
15. On termination of the tenancy between the parties the Applicant was entitled to the return of the deposit which he had paid in the sum of £360.00.
16. The tenancy agreement between the parties made no provision for the basis upon which any deductions would be made from the deposit by the Respondent.
17. The Respondent has not sought to make any deductions from the deposit paid by the Applicant.
18. The Applicant is entitled to repayment of the deposit of £360.00.

### Decision

19. There was no dispute in relation to the findings in fact. In the circumstances the Tribunal are satisfied that the Respondent accepted that the sum of £360.00 was due and payable to the Applicant. The Tribunal accordingly made an order in favour of the Applicant for that amount.

20. The Tribunal accordingly granted an order for payment by the Respondent to the Applicant in the sum of £360.00.
21. The Respondent had been provided with an application form for a Time-to-Pay Direction along with related guidance documents. The Respondent had not lodged any application for Time-to-Pay. In the course of the discussions at the CMD the Respondent indicated he would require time to make payment to the Applicant of the sum due. The Applicant confirmed to the Tribunal that they were willing to allow a reasonable period for the Respondent to make the payment due in terms of the Tribunal's final decision. Having considered the circumstances the Tribunal accepted that it was reasonable to give a period of time to the Respondent to make payment of the sum due. The Tribunal accordingly determined to require the Respondent to make payment of the full amount of £360.00 within 3 months from intimation of the Tribunal's decision.

### **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. Cowan**

**Legal Member/Chair**

**23 June 2021**

**Date**