



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/21/1564

Re: Property at 196 /4 Morrison Street, Edinburgh, EH3 8EB (“the Property”)

Parties:

Mr Amambo Essien, 9/1 Home Street, Edinburgh, EH3 9JR (“the Applicant”)

Mrs Reena Khanna, 9 Horn Lane, London, W3 9NJ (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the respondent shall make payment to the applicant of the sum of nine hundred and seventy five pounds (£975).

1. This was a case management discussion ‘CMD’ in connection with an application in terms of Rule 111 of the First-tier Tribunal for Scotland (Procedure) Regulations 2017 ‘the rules’ and s71 of the Private Housing (Tenancies) (Scotland) Act 2016, ‘the Act’. The application was made on 29 June 2021. The applicant attended the CMD. The respondent did not attend and was not represented. Due to sheriff officer’s being unable to effect service, the application proceeded by way of service by advertisement. The tribunal had sight of the certificate of service by advertisement and proceeded with the CMD in terms of rule 24 and 29. There was a second application before the tribunal in terms of rule 103 for a tenancy deposit.
2. The tribunal had before it the following copy documents: -
 - (1) Application dated 29 June 2021.
 - (2) Undated tenancy agreement entitled ‘Short Lets Tenancy Agreement’.

- (3) WhatsApp messages regarding let of the property, payment and return of the deposit.
- (4) Website advert for the property.
- (5) Email from applicant to respondent dated 13 May 2021 requesting return of the deposit.
- (6) Applicant's submissions to the tribunal.
- (7) Receipts for deposit dated 23 November 2020 and 2 December 2020.
- (8) Sheriff officer's report dated 2 August 2021.

Preliminary matters

3. The tribunal noted that the sheriff officer's report dated 2 August 2021 stated that they had made inquiries at the address for the respondent given by the applicant (9 Horn Lane London W3 9NJ). They had been unable to serve the papers but were able to confirm that the respondent is female, and she is the owner of that property. The applicant stated that he had always dealt with a male and he had assumed that the person referred to in the tenancy agreement was the person he had been dealing with throughout the tenancy. The tribunal noted that Reena Khanna was the owner of the property and was the landlord referred to in the tenancy agreement and therefore allowed the application to be amended from 'Mr' to Mrs Rheena Khanna. The applicant now understands that this must have been an individual acting on behalf of the landlord and owner Mrs Rheena Khanna.
4. The applicant clarified that the deposit paid was £975 and that this is made up of two sums of £325 and £650 as per the two receipts lodged.
5. The applicant stated that he had made reference to a holiday let in his submissions because the landlord's representative made reference to a holiday let when the applicant gave one month's notice of his intention to give up the tenancy on 31 March 2021. The applicant stated he and his wife lived in the property. They had one bedroom and made use of the bathroom kitchen and lounge. There were two other rooms in the property which were locked and they did not have access to them.
6. The applicant clarified that the tenancy started on 19 December 2020 and he left the property on 30 April 2021.
7. The applicant stated he signed the tenancy agreement and returned it to the respondent. He asked the respondent's representative if it could be amended to reflect his deposit of £975. The respondent's representative declined to amend the agreement and a signed copy was never sent to the applicant.
8. Clause 16 of the agreement makes reference to a deposit of £1950 but the applicant stated that this was the payment of three months rent which he was obliged to pay in advance. This sum is referred to in the receipt dated 2 December 2020 as 'rent for initial three months £1950'

The applicant's position.

9. The applicant and his wife were from Nigeria and came to Edinburgh in 2020 to study at Edinburgh University. The applicant saw the property online via the advert lodged and paid a deposit of £975 and three months' rent in advance. The money was paid to Syozant Properties Sai Ltd. This company was referred to in the original advert for the property. Clause 51 of the tenancy agreement provides: for any matter relating to this tenancy the contact information for the Property Manager of the landlord is Syozant Properties Sai Ltd.
10. The applicant also pointed out that he should have been given a proper private residential tenancy agreement 'PRT' rather than the agreement he was given. It was the applicant's position that the agreement between the parties is in fact a PRT as he resided in the property as his only home and he and his wife were the only people living there. The applicant gave notice that he was leaving the property on 31 March 2021. The respondent's representative refused to return the deposit. The applicant was told that one month's rent would be deducted, and he would get the balance 14 days after he left the property. The deposit has not been returned. There was no reason for the respondent to retain the deposit.

11. Findings in fact

- The respondent is the owner of the property.
- The applicants rented the property from the respondent from 19 December 2020 until 31 March 2021.
- The applicant paid a deposit of £975 to the respondent's agents Syozant Properties Sai Ltd in two tranches: £650 on 23 November 2020 and £325 on 2 December 2020.
- The applicant has called upon the respondent's representative to return the deposit.
- The deposit has never been returned.

12. Findings in law

- The tenancy was a private residential tenancy.

Reasons

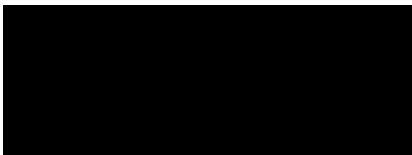
13. This was an undefended application to recover a tenancy deposit. The tribunal was satisfied that the parties entered into a private residential tenancy agreement 'PRT' notwithstanding that the agreement is headed 'Short Lets Tenancy Agreement'. The agreement was entered into in December 2020. In terms of s1 of the Act, the property was let to the applicant as a separate dwelling as his only or principal home. The tribunal was therefore satisfied that the applicant was

therefore entitled to make the application for civil proceedings arising out of a PRT.

14. The tribunal was satisfied on the clear oral and written evidence that the applicant has paid a deposit to the respondent's agents, and this has not been returned. The applicant has now given up the tenancy and has called upon the respondent's representative to return the deposit. The tribunal accordingly granted an order for the sum of £975 being the deposit paid.

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.



Lesley Ward

Legal Member

17 September 2021

Date