

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017

Chamber Ref: FTS/HPC/CV/22/0449

Re: Property at 16/7 Viewforth, Edinburgh, EH10 4JG (“the Property”)

Parties:

Miss Bylgja Gudnyjardottir, 33/2 Lorne Street, Edinburgh, EH6 8QW (“the Applicant”)

Mr Balint Bolygo, 67 Approach Road, Margate, CT9 2AP (“the Respondent”)

Tribunal Member:

Fiona Watson (Legal Member) and Eileen Shand (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for payment of the undernoted sum to the Applicant:

Sum of TWO HUNDRED AND TWENTY-TWO POUNDS AND SIXTY-FOUR PENCE (£222.64) STERLING

- Background
- 1. An application was submitted to the Tribunal under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking a payment order against the Respondent in relation to repayment of deposit paid under a private residential tenancy agreement.
- 2. A Case Management Discussion took place on 6 May 2022 by tele-conference. The parties appeared personally. A separate application by the Applicant seeking an order against the Respondent under Rule 103 of the Rules and under case reference FTS/HPC/PR/22/0447 was heard at the same time.
- 3. The Applicant submitted that she had entered into a Private Residential Tenancy Agreement with the Respondent which commenced 1 December 2018 and ended 8 January 2022. A copy of the tenancy agreement was lodged with

the application. The Applicant paid a deposit of £412.50 to the Respondent by way of bank transfer. The deposit was not returned to her at the termination of the tenancy and upon seeking repayment from the Respondent, the Respondent had advised that he had incurred costs in cleaning the property and rectifying damaged flooring (caused by a cat urinating in the boxroom) which exceeded the amount of the deposit. This damage was disputed by the Applicant. She submitted that she had permission to keep one cat in the property, that she had looked after a friend's two cats for a temporary period, and that no damage had been caused by the cats during their occupation of the property.

4. The Respondent submitted that there had been significant damage caused to the flooring in the boxroom which he had discovered following the Applicant vacating the property. The carpet was saturated in urine which had soaked into the floorboards. The floorboards required to be sanded and sealed and a new covering put on top. Permission had been given to have one cat in the Property so long as it caused no damage. There had been as many as three cats in the property for an unknown period of time and without landlord consent. It took three days of labour to rectify the damage caused. Further, the Applicant had stayed in the property for an extra seven days as her new flat was not ready for her to move into, and she had not paid the additional rental for that period. The costs incurred by the Respondent as regards the damage and the extra rental exceeded the amount of the deposit paid by the Applicant. The Respondent added that he had made attempts to agree a resolution to the tribunal proceedings to avoid the necessity of the hearing, but that these had not been fruitful.
5. The CMD was adjourned and a Hearing fixed (on a date to be hereinafter assigned) to hear evidence as to the damage caused to the Property and the extent to which, if any, the deposit should be repaid to the Applicant.
 - The Hearing
6. A Hearing took place on 15 July 2022 by tele-conference. The parties appeared personally. A separate application by the Applicant seeking an order against the Respondent under Rule 103 of the Rules and under case reference FTS/HPC/PR/22/0447 was heard at the same time.
7. The Applicant again moved for the deposit to be returned to her in full. She accepted that she had stayed in the property for an extra 7 days and that this amount should be deducted from the deposit. She did not agree that there had been any damage caused by her or her cat which should be deducted from the deposit.
8. The Applicant submitted that there had been no inventory of condition of the Property carried out when she moved in, nor when she moved out. There had been no inspections of the Property during her period of occupation. She had a cat, and had looked after a friend's two cats for a short period of time. She denied that there had been the damage caused to the boxroom as claimed by the Respondent.

9. The Respondent submitted that he had given consent to the Applicant to keep one cat in the Property. No consent had been sought, nor given, for any additional cats. It was submitted that there had been three cats in the property for a prolonged period of time, and reference was made to Instagram photographs of said cats. When the tenant moved out in January 2022, he inspected the Property a couple of days later and discovered a foul smell of cat urine in the boxroom. The carpet was very stained and when removed, he found that the urine had stained the floorboards. The carpet had to be thrown away. As the urine had seeped into the floorboards, these had to be chemically treated and sanded down and sealed. An invoice from the Respondent's own company was lodged showing the costs of the work had been £684. An estimate for another builder was lodged as a comparison, which was in the sum of £875. The Respondent carries out refurbishments of properties as a job and had carried out the work himself. He also lodged receipts from Wickes, Screwfix and B&Q showing costs incurred in purchasing materials. He submitted that the total cost of the works came to £909.97.
10. The Respondent also submitted that the 7 days of occupation at the end of the tenancy amounted to £186.29 and also required to be deducted from the deposit.
11. The Respondent admitted that he had not inspected the Property at the start of the Applicant's tenancy, and hadn't been in the Property since 2015/2016. He submitted that no previous tenants had had pets as no consent had been asked for and on that basis the only person who could have been responsible for the cat urinating in the box room and the damage caused, was the Applicant. There were other works carried out to the Property after the Applicant had left, but he was not claiming the cost of those from the Applicant.

- Findings in Fact

1. The Tribunal made the following findings in fact:
 - (i) The parties entered into a Private Residential Tenancy Agreement ("the Agreement") which commenced 1 December 2018 and ended 8 January 2022;
 - (ii) In terms of Clause 8 of the Agreement, the Respondent was jointly and severally liable to pay a monthly rent of £825 to the Applicant;
 - (iii) When there had been another joint tenant in the Property, the Applicant had paid the sum of £412.50 per month in rent to the Respondent;
 - (iv) The parties had agreed to reduce the rent to £650 per month between April and November 2021 when the Respondent resided alone;
 - (v) The Applicant had occupied the Property for a period of 7 days following the termination of the tenancy and was obliged to pay a sum of rent to cover that period of occupation.
 - (vi) The Respondent had not inspected the Property during the Applicant's period of occupation;
 - (vii) The Respondent had not compiled an inventory of condition of the Property at the start of the Agreement, nor at the end.

- Reasons for Decision

2. The Tribunal was satisfied that the Applicant was entitled to the deposit being returned to her, under deduction only of the rent due for the period of 7 days that she had occupied the Property following her last payment of rent. The monthly rent was £825 in terms of the Agreement. This equates to a daily rate of £27.12. Seven days is calculated as £189.84 and should be deducted from the deposit held by the Respondent.
3. The Tribunal was not satisfied that there had been a case made by the Respondent that any damage costs incurred by him should be attributed to the Applicant. By his own admission, the Respondent accepted that he had not done an inspection of the Property since 2015/2016. He had no idea of the condition of the Property, and particularly of the boxroom, at the start of the Agreement. No inspections had been carried out during the course of the Agreement. Whilst the Respondent submitted that no previous tenants had had pets as they had not asked him for consent for same, it would appear distinctly possible that a tenant could have a pet without asking a landlord for the necessary consent. When this was put to the Respondent, he did not wish to accept this possibility. Whilst the damage to the boxroom floor as claimed by the Respondent was denied by the Applicant in any event, the Tribunal was not satisfied that there was any evidence before it that if any damage had been incurred, it was incurred during the course of the Applicant's occupation and not before. It was also noted by the Tribunal that due to the Respondent's failure to lodge the deposit into a tenancy scheme as he was legally obliged to do, he had denied the Applicant of the opportunity to dispute any deposit deductions via the scheme's dispute resolution service, as she should have been allowed to do.

- Decision

4. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondents for payment of the undernoted sum to the Applicants:

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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.

Fiona Watson

Legal Member

Date: 15 July 2022