



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/22/0495

Re: Property at 3/2, 6 Barrington Drive, Glasgow, G4 9DT (“the Property”)

Parties:

Mr Krzysztof Dulba, Polna 19, 05-220 Zielonka, Poland (“the Applicant”)

Mr Javed Ali, 74 Fergus Drive, Glasgow, G20 6AP (“the Respondent”)

Tribunal Members:

Sarah O'Neill (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment by the respondent of the sum of £30 should be granted in favour of the applicant.

Background

1. By application received on 18 February 2022, the applicant submitted an application seeking a payment order brought in terms of rule 111 (Application for civil proceedings in relation to a private residential tenancy) of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”). The applicant sought an order for payment of £250 in respect of the tenancy deposit which he said he had paid to the respondent, which had not been repaid to him.
2. Attached to the application form were:
 - i. copy tenancy agreement between the parties in relation to the property which commenced on 1 June 2021
 - ii. copy Notice to Leave dated 12 October 2021 sent to the applicant and Shaun Turner, his co-tenant, by the respondent.

- iii. various email correspondence between the parties dated between 29 December 2021 and 14 February 2022 regarding the return of the alleged tenancy deposit.
 - iv. Evidence of payment of the alleged tenancy deposit to a previous tenant, Ms Borbola Varga on 28 April 2020.
 - v. written confirmation from each of the three approved tenancy deposit schemes that the applicant's deposit was not registered with them
3. The application was accepted on 23 February 2022. Brief written representations were received from the respondent by email on 4 April 2022. These stated: *"In response to your letter dated 22 March 2022, we never received any money as a deposit from Krzysztof Dulba. Therefore there was no deposit to put into a deposit scheme. It seems that an arrangement was made between Krzysztof and the previous tenant Borbola Varga where money was exchanged between them."*
 4. The tribunal issued a direction to the applicant on 29 March 2022, directing him to provide certain further information relating to the deposit by 26 April 2022. A response to the direction was received from the applicant by email, together with various attachments, on 26 April 2022.
 5. The applicant also made a related application (reference no: FTS/HPC/PR/0317) under rule 103 of the 2017 rules, seeking an order for payment in respect of the respondent's alleged failure to lodge the deposit paid by the applicant with an approved tenancy deposit scheme. That application was conjoined with the present application and a separate decision and order are issued alongside the decision and order in relation to this application.

The case management discussion

6. A case management discussion (CMD) was held by remote teleconference call on 10 May 2022. The applicant was present on the teleconference call. The respondent was not present or represented on the call. The tribunal was satisfied that the respondent had been given reasonable notice of the date and time of the CMD, and therefore proceeded with the CMD in the respondent's absence.
7. The tribunal heard evidence from the applicant relating to his application. Having considered all of the evidence before it, including the written representations received from the parties, the tribunal did not consider that it was able to make sufficient findings to determine the applications at the CMD. The tribunal took the view that it may be contrary to the interests of the parties to make a decision without a hearing. The respondent had, albeit briefly, indicated that he disputed that the applicant had paid a tenancy deposit in relation to the property. The tribunal therefore considered that a

hearing should be fixed to hear further evidence from both parties in relation to both applications.

8. The tribunal issued a further direction to the parties on 13 May 2022, requiring the respondent to provide various further information by 8 June 2022. Both parties were also invited to submit any further written representations or documents which they wished the tribunal to consider and to provide details of any witnesses they wished to call to give evidence at the hearing.
9. Responses to the direction were received from the respondent on 10 and 26 May 2022. A response was received from the applicant on 13 June 2022. On 9 June 2022, an email was received from the respondent confirming that as he would be on holiday at the date of the hearing, his brother Mr Nahid Ali ("Mr Ali") would represent him at the hearing. On 13 June 2022, an email was received from Mr Ali stating that he wished to call the previous landlord, Mrs Robeena Khalid, as a witness at the hearing.

The hearing

10. A hearing was held in relation to both applications by remote teleconference call on 15 June 2022. The applicant was present on the teleconference call. The respondent was represented on the call by Mr Ali.

The evidence

11. The following evidence was considered by the tribunal:
 - The application form, together with a copy of the tenancy agreement between the parties and other attached documents.
 - Further information received from the applicant on 23 February 2022.
 - Registers Direct copy of Land Register title GLA137151, which confirmed that the house is owned by the respondent.
 - Copy Scottish Landlord Register registration details for the property, confirming that the respondent is the registered landlord.
 - Written representations received from the respondent on 4 April 2021.
 - Response from the applicant to the tribunal's first direction received on 26 April 2022
 - Responses to the tribunal's second direction received from the respondent on 10 and 26 May 2021.
 - Further written representations received from the applicant on 13 June 2021.
 - The oral representations of the applicant at the CMD.
 - The oral representations of the parties at the hearing.

Summary of the issues

12. The issues to be determined were:

1. Whether the £250 paid by the applicant to the previous tenant was a tenancy deposit.
2. If that sum was a tenancy deposit, whether it had been received by the respondent and whether he was liable to repay it to the applicant.
3. Whether an order should be made against the respondent for the balance of the £250 paid by the applicant to the previous tenant.

Findings in fact

13. The tribunal made the following findings in fact:

- The applicant entered into a tenancy agreement in relation to the property commencing on 1 June 2020. The landlord was named in the tenancy agreement as “Khalid/Ali” and the agreement was signed “R.Khalid.”
- The respondent has been the owner of the property since 20 December 2018. The previous owner and landlord of the property was his sister, Mrs Robeena Khalid.
- The respondent is the registered landlord of the property.
- The respondent was the landlord in relation to the tenancy agreement.
- Mr Ali acted as agent for both Mrs Khalid and the respondent in relation to the management and letting of the property.
- The tenancy agreement named the applicant only as the tenant. It stated that it related to “ALL and WHOLE FLAT presently occupied by the Tenants forming part of the flatted dwellinghouse at 6 Barrington Drive, Glasgow G4 9DT”.
- At the start of the applicant’s tenancy, there were two other tenants in the property. Each tenant had a separate tenancy agreement. Each had their own bedroom, and they all shared the kitchen and bathroom.
- The tenancy agreement provided that “The Tenants” were to pay rent for at the rate of £780 per calendar month on the first of each month and that a tenancy deposit of £675 was to be paid to the landlord by “the Tenants”, which was *“returnable within 14 days of the termination of the tenancy subject to deduction for any repairs or replacements other than ordinary fair wear and tear occasioned by the Tenants use of the subjects during the tenancy or in respect of any other sums owing to the Landlord as a result of the tenancy”*.
- The applicant paid £250 in rent each month for the first year of his tenancy. His rent later rose to £265 per month when another tenant, Ms Ema Dauksaite, moved out and he moved into her room, which was larger.
- The applicant paid the monthly rent into a bank account under the name “R. Khalid”.

- The tenancy agreement provided that the rent was to be paid in advance on the 1st of each month, but the parties had agreed that the applicant would pay it on the 5th of each month.
- The applicant paid the sum of £380 to Ms Borbola Varga on 28 April 2020. Ms Varga was the previous tenant who occupied the room which the applicant moved into. The reference for the payment was “Deposit for room.”
- A notice to leave dated 12 October 2021 was sent by Ivy Property on behalf of the respondent to the applicant and his fellow tenant, Shaun Turner. The notice cited ground 5, stating that the respondent intended to move his brother into the property. It said that an application for eviction would not be made to the tribunal before 15 January 2022
- The third tenant, Ms Dauksaite, who had lived in the property since June 2018, had moved out on or around 5 June 2021.
- The applicant moved out of the property on or around 23 December 2021.
- The parties exchanged a number of emails between 29 December 2021 and 14 February 2022 regarding the return of his deposit and finalising various bills following the end of the tenancy.
- On 24 March 2022, a payment of £220 was made into the applicant’s bank account from the same account in the name of “R. Khalid” into which he had paid the rent for the property.

Preliminary issues

14. It became apparent at the start of the hearing that Mr Ali had not seen the note of the CMD of 10 May 2022. The tribunal also noted that neither the written representations from the applicant or Mr Ali’s request to call a witness, which were both received on 13 June 2022, had been lodged at least 7 days prior to the hearing in accordance with rule 22 of the 2017 rules.
15. The applicant apologised, saying that he had not been aware that written representations were required to be submitted at least 7 days before a hearing. He also said that he had no objection to Mr Ali calling Mrs Khalid as a witness.
16. Mr Ali said that he had not had the opportunity to read the representations submitted by the applicant. He said that he understood that he had not notified the tribunal of his intention to call a witness within the required timescale. He indicated that he was not overly concerned about calling her as a witness if the tribunal did not agree to this. He said that he had just wanted to offer her evidence should the tribunal think it would be useful.
17. The tribunal therefore adjourned the hearing for around 20 minutes, in order to give Mr Ali the opportunity to read the CMD note and to give the tribunal the opportunity to consider whether to agree to 1) the late lodging of the applicant’s representations and 2) Mr Ali’s request to call Mrs Khalid as a

witness.

18. Following the adjournment, the tribunal confirmed that it considered it would be helpful to hear from Mrs Khalid about what any arrangements for tenancy deposits in the property had been prior to the applicant's tenancy. In the end, however, when the tribunal sought to hear from Mrs Khalid, it was not possible to contact her. The tribunal adjourned the proceedings twice to allow time for this, but neither the tribunal clerk nor Mr Ali were unable to contact her on the telephone.
19. Both Mr Ali and the applicant indicated that they were happy for the tribunal to proceed without her witness evidence. By that point in the proceedings, having heard Mr Ali's evidence -and noting in particular that he appeared to have acted as Mrs Khalid's agent throughout the period when the property had been let out- the tribunal considered that it had enough information to enable it to make a decision without hearing from the witness.
20. The tribunal also decided to consider the written representations submitted by the applicant on 13 June 2022. These were fairly brief and much of the information included had already been submitted by the applicant or raised by him at the CMD.

The applicant's submissions

21. The applicant told the tribunal that he had paid a tenancy deposit of £250 at the start of his tenancy. He had paid this money to Ms Varga, the previous tenant, who was moving out of the room which he was moving into. He had been told by Ms Varga that this was the usual practice in the flat i.e. that each new tenant would pay their deposit to the previous tenant, who had in turn paid a deposit to their predecessor. This was later confirmed by Mr Ali, who had told him to pay the deposit to Ms. Varga. The applicant had produced a written confirmation from his bank that he had transferred the sum of £380 into Ms Varga's bank account on 28 April 2020. The reference for the payment was 'Deposit for room'.
22. The applicant said that when he paid this money to Ms Varga, it had been his understanding that £250 of this sum was a tenancy deposit. The additional £130 comprised payment for a mattress which he had agreed to buy from Ms Varga and payment for access to the room to move his belongings in after she had moved out but was still paying rent, and before he moved in.
23. The applicant had produced a number of emails between himself and the respondent regarding the tenancy deposit. He had first asked for his deposit to be returned on 29 December 2021. He again sent an email to the respondent on 1 February 2022, asking when his deposit would be returned to him. In his response of 2 February 2022, the respondent said: "*I think*

firstly, we need to make sure that the gas, electricity and council tax are all sorted out.” and went on to ask whether meter readings had been taken, what arrangement the applicant had with Mr Turner regarding the payments of bills and whether the applicant had been in touch with the council tax department.

24. Following a response of 10 February 2022 from the applicant on these issues, the respondent replied the same day saying: *“Last thing I need before proceeding is a forwarding address from you, which you have not provided. Sorry for the delay in this I still need to finalise things with Shaun as well. Once received I will try and complete everything.”*
25. The applicant argued that the respondent had never disputed in any of the email exchanges that a deposit had been paid to him by the applicant, or that this should be returned to him. His emails had in fact suggested that the money would be repaid once the information requested from the applicant had been provided. His deposit had not been returned to him as at the date when he made the tribunal applications.
26. He had produced evidence prior to the CMD confirming that the sum of £220 had been paid into his bank account on 24 March 2022 from an account in the name of “R. Khalid.” This was the same bank account into which he had paid rent during his tenancy. He assumed that this payment was in respect of part repayment of his deposit. He said that he was not owed money for anything else by the respondent. He had paid the rent for December 2021 on 5 December and moved out on 23 December. He said that there had been no discussion with the respondent or Mr Ali regarding any reimbursement of rent. He had never pursued any reimbursement in respect of rent from the respondent, as he believed that he had paid the correct amount.
27. It was the applicant’s position that although the £250 was not paid by him directly to the respondent, it was nevertheless a tenancy deposit. The respondent must have kept the deposit from a previous tenant, which in turn accounted for his own deposit. He felt that he was playing a game of ‘musical chairs’ which had stopped when no-one had moved into his old room because the respondent had asked him to leave. He had not therefore received his deposit back from the next tenant. The respondent must therefore be liable to pay him his deposit back.
28. At the hearing, the applicant pointed out that both Ms Varga and Ms Dauksaite (in her email of 30 April 2022) had referred to the money paid as a deposit and had never called it anything else. He said that Ms Dauksaite had eventually received her deposit back from the respondent around 6 months after leaving the property, having pursued Mr Ali about this for some time. He told the tribunal at the CMD that he was unsure as to whether Mr Turner had received his deposit back, as they were no longer in touch.

29. The applicant confirmed that as only £220 had been repaid to him by the respondent, he wished to seek a payment order for £30 for the balance of the deposit which he had paid.

The respondent's submissions

30. Mr Ali said that the respondent denied that the applicant had paid a tenancy deposit to him. While the tenancy agreement referred to a deposit, this was because it was a standard tenancy agreement which Mrs Khalid, the previous landlord, had always used. The applicant had paid his deposit directly to the previous tenant, Ms Varga. This was an arrangement they had made between themselves. As the money was paid to the previous tenant, it was not a deposit, but was a repayment of the money previously paid by them as advance rent.

31. When asked why £220 had been paid back to the applicant on 24 March 2022 from the account he had paid rent into, Mr Ali said that payment had been made to return the one month's extra rent which the applicant had paid. The amount returned was not a full month's rent because the applicant left before the end of the month, on 23 December 2021. The repayment of this money had been delayed pending confirmation of the situation regarding liability for council tax and fuel bills at the property.

32. Mr Ali did not dispute, however, that the respondent owed the applicant a further £30, being the balance of the £250 he had paid to Ms Varga. He said that he had no problem with paying this money to the applicant, stating that he would pay this money to the applicant from his own pocket.

Statement of reasons

33. For the reasons set out in more detail in its decision of the same date relating to the applicant's other application (reference no: FTS/HPC/PR/22/0317), the tribunal determined that the applicant had paid a tenancy deposit of £250 at the start of his tenancy, which had been received by the respondent. The respondent was therefore liable to pay this money back to the applicant.

34. The respondent had however only repaid the sum of £220 to the applicant. Mr Ali did not dispute that a further £30 was due to the applicant, and he had offered to pay this himself.

35. The tribunal therefore determined that the respondent owed the applicant the sum of £30, being the balance of the tenancy deposit paid by the applicant to the respondent.

Decision

For the reasons set out above, the tribunal determined that an order for payment by the respondent of the sum of £30 should be granted in favour of the applicant.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by 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.

Sarah O'Neil

Legal Member/Chair

29 June 2022 _____
Date