



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/22/2457

Re: Property at 13C Seton Street, Ardrossan, KA22 8JJ (“the Property”)

Parties:

Mr Raymond Alexander, c/o CHAP, Michael Lynch Centre, 71 Princes Street, Ardrossan, KA22 8DG (“the Applicant”)

Mr Kenneth Rosendale, 27 Ardneil Court, Ardrossan, KA22 7NQ (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the Respondent to the Applicant in the sum of £400.00.

Background

1. By application dated 22 July 2022 the Applicant’s representative, Mr Alister Meek of CHAP, Ardrossan, applied to the Tribunal for an order for payment in respect of the return of the deposit paid by the Applicant at the commencement of his tenancy of the property. The Applicant’s representative submitted a copy of the tenancy agreement in support of the application.
2. By Notice of Acceptance dated 25 October 2022 a legal member of the Tribunal with delegated powers accepted the application and a Case Management (“CMD”) Discussion was assigned.
3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 5 December 2022.

The Case Management Discussion

4. A CMD was held by teleconference on 17 January 2023. The Applicant did not attend but was represented by his representative Mr Alister Meek. The Respondent did not attend nor was he represented. The Tribunal being satisfied that proper intimation of the CMD had been given to the Respondent determined to proceed in his absence.
5. Mr Meek confirmed that the parties had entered into a Private Residential tenancy agreement that had commenced on 12 February 2018 at a rent of £420.00 per calendar month. Mr Meek explained that the Applicant had paid a deposit of £400.00 in cash to the Respondent at the commencement of the tenancy but had not been provided with a receipt. Mr Meek referred the Tribunal to the terms of the tenancy agreement that confirmed that the Applicant was obliged to pay a deposit of £400.00 to the Respondent.
6. Mr Meek went on to say that the tenancy had ended on 9 April 2022 and that following the end of the tenancy the Applicant had requested the return of his deposit. He had ascertained that the deposit had not been lodged in an approved Tenancy Deposit Scheme but had been retained by the Respondent. Mr Meek explained that the Applicant was blind and had one leg amputated and had health issues. He said the Applicant had found the Respondent intimidating. Mr Meek said that the Respondent had claimed that there should be a deduction from the deposit to reflect the cost of cleaning the property following the end of the tenancy but the Respondent had failed to provide any receipts for the cost of cleaning. The Applicant was therefore seeking the return of the full deposit. Mr Meek explained that the Applicant had been out of time to make an application for a payment under the Tenancy Deposit Scheme (Scotland) Regulations 2012 and was therefore only seeking the return of the deposit.

Findings in Fact

7. The parties entered into a Private Residential Tenancy Agreement that commenced on 12 February 2018 at a rent of £420.00 per calendar month.
8. The Applicant paid a deposit of £400.00 in cash to the Respondent at the commencement of the tenancy.
9. The Respondent failed to lodge the deposit in an approved tenancy deposit scheme throughout the duration of the tenancy.
10. The Respondent retained the deposit at the end of the tenancy.

Reasons for Decision

11. The Tribunal was satisfied from the written representations and oral submissions that the parties entered into a Private Residential tenancy that commenced on 12 February 2018 at a rent of £420.00 per calendar month. The

Tribunal was also satisfied that the Applicant had paid a deposit of £400.00 in cash to the Respondent at the commencement of the tenancy in accordance with the terms of the tenancy agreement. The Tribunal was also satisfied from the explanation provided by Mr Meek and from the earlier written submissions that the Respondent had not lodged the deposit in an approved tenancy deposit scheme as he was obliged to do in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2012 but had instead retained the funds.

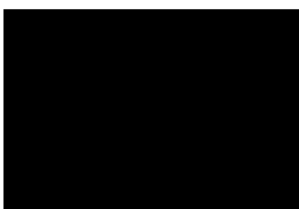
12. The Tribunal noted that the Respondent had apparently claimed that he was entitled to retain some of the deposit to cover the cost of cleaning the property following the end of the tenancy but had failed to provide the Applicant with receipts for the cost incurred. The Tribunal also noted that despite being given an opportunity to submit written representations to the Tribunal and to attend the CMD the Respondent had chosen to do neither. The Tribunal was therefore satisfied that the Applicant was entitled to an order for payment in respect of the whole of the deposit, namely £400.00.

Decision

13. Having carefully considered the written representations and oral submissions and being satisfied that it had sufficient information before it to make a decision without the need for a hearing, the Tribunal finds the Applicant entitled to an order for payment by the Respondent to the Applicant in the sum of £400.00.

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.



Graham Harding
Legal Member/Chair

18 January 2023
Date