



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/22/2817

Re: Property at 2 Belmont St, Glasgow, G12 8EW (“the Property”)

Parties:

Miss Malak El Dessouki, 109 Hyndland Road, Glasgow, G12 9JD (“the Applicant”)

Mr Supple James Timothy, whose present whereabouts are unknown (“the Respondent”)

Tribunal Members:

George Clark (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and made an Order for Payment by the Respondent to the Applicant of the sum of Three Thousand and Fifty Pounds (£3,050).

Background

By application, dated 10 August 2022, the Applicant sought an Order for Payment against the Respondent. The sum sought was £3,100. She stated that she had agreed a tenancy of the Property and signed a Lease. The Respondent had required her to pay a tenancy deposit of £350 and told her that the National Residential Landlords Association required her to pay 2 months’ rent up front. They had then increased this to 5 months, which she had paid. They had tried to increase this still further to 8 months, but she had refused to pay it, as she was only intending to stay for 9 months. The Respondent and his solicitor had agreed to meet her at the Property to hand over the keys and she was to provide them with a passport photograph, but they had both been unreachable for a period of 24 hours on the day of the proposed viewing and for the following 24 hours. The Respondent had used the wrong style of lease and had failed to provide details of his landlord registration number or certificate of ownership. When she requested a full reimbursement, she

was told that she could not cancel the reservation and that she could not move in unless she increased the upfront payment to 8 months' rent.

The application was accompanied by a copy of a signed Lease between the Parties commencing on 14 August 2022 and stating that the tenant had decided to terminate the tenancy by 31 May 2023. The rent was £550 per month, with a deposit of £300. The Lease appeared to be in an English style and referred to English legislation, but it also made reference to two of the Grounds for Recovery of Possession in the Housing (Scotland) Act 1988.

The Applicant also provided the Tribunal with copies of further documents, including two "To Whom it May Concern" letters on what bore to be National Residential Landlords Association ("NRLA") notepaper. The first one stated that the landlord acknowledged payment of the security deposit of £300, but that the Applicant could not gain possession until she provided the transfer which was required by the Association "in order to finalize the agreement". The second letter confirmed receipt of £1,100, the additional 2 months' rent, "which will guarantee that you are much capable enough to pay your rent for the duration of your stay." The letters bore to have been signed by the Respondent in the presence of the NRLA Local Representative. The documents provided also included an email from "Attorney Allanson" of 20 July 2022 confirming that (s)he (Lamine) would be present with the Respondent during the viewing, if the Applicant made the transfer into his/her account for the refundable security deposit. The bank details given for the transfer were an account in the name of Minty Lamine, but on 23 July 2022, in an email from "legal attorney consultant", the Applicant was given details of money to be paid into an account in the name of Emma Finch.

The Applicant also provided copies of text messages between her and the Respondent between 19 July and 10 August 2022. In these exchanges, the Respondent said that it was NRLA who had insisted on eight months' rent being paid up front and the Respondent indicated that his solicitor had to register the tenancy agreement with NRLA. The exchanges ended when the Applicant demanded her money back on 10 August, contending that the Respondent had told her several facts that were untrue and illegal, including the request for more than 6 months' rent, the fact that NRLA does not operate in Scotland, the fact that the contract was incorrect and the failure of the Respondent to provide his landlord registration number or the flat number.

On 29 November 2022, the Tribunal advised the Parties of the date and time of a Case Management Discussion and the Respondent was invited to make written representations by 20 December 2022. The Respondent did not make any written representations to the Tribunal.

A Case Management Discussion scheduled for 7 February 2023 was postponed, as sheriff officers had been unable to effect service on the Respondent of the Case papers. A new date was fixed for a Case Management Discussion and service on the Respondent was effected by advertisement on the Tribunal website between 20 February 2022 and 22 March 2023.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the morning of 22 March 2023. The Applicant was present. The Respondent was not present or represented. The Applicant told the Tribunal that she had not received any payment from the Respondent since the date of the application. She had reported the matter to Police Scotland and had also asked her bank to investigate whether there was any way of recovering her money from the other banks concerned. She said that she had received through a Facebook group a message from someone recommending their landlord and saying that he had a property available. She had responded to that, and the Respondent had then sent her photographs of the Property and of another flat. She confirmed to the Tribunal that the deposit was £300, not £350 as stated in the application, so the amount sought should be reduced by £50.

Reasons for Decision

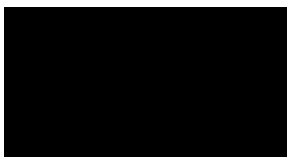
Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation to enable it to decide the application without a Hearing.

The Tribunal noted that the Parties had signed a tenancy agreement in advance of the commencement of the tenancy and that the Applicant had paid a deposit and 5 months' rent in advance. The Tribunal was prepared to regard the contract as a Private Residential Tenancy Agreement although the Applicant had not actually moved in.

The Tribunal was satisfied that the Respondent was in breach of the terms of the tenancy agreement by failing to give the Applicant the keys to the Property to enable her to move in and that the sum sought, as reduced by £50, was refundable to her. Accordingly, the Tribunal granted the application and made an Order for Payment against the Respondent.

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.



Legal Member/Chair

22 March 2023
Date