



**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/22/4235**

**Re: Property at 324/1 Easter Road, Edinburgh, EH6 8JT (“the Property”)**

**Parties:**

**Ms Zeynep Erdal, 12/12 Lorne Street, Edinburgh, EH6 8QU (“the Applicant”)**

**Ms Anne Cameron, 25 Findlay Avenue, Edinburgh, EH7 6EY (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member) and Leslie Forrest (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment against the Respondent in favour of the Applicant in the sum of SIX HUNDRED POUNDS (£600) STERLING. The order for payment will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondents.**

**Background**

1. This is an application received on 24 November 2022 for an order for payment under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”). The Applicant sought return of a deposit of £600 from the Respondent, her former Landlord.
2. A Case Management Discussion (“CMD”) proceeded on 28 February 2023. Mr Maloney from Living Rent appeared on behalf of the Applicant, who was also in attendance. Ms Cameron appeared on her own behalf.

3. In support of the application Mr Maloney had lodged a copy tenancy agreement signed and dated 26 May 2017, letters from the three deposit scheme administrators Safe Deposits Scotland, Letting Protection Scotland and My Deposits Scotland, a written submission setting out the basis of the application, two undated letters from Living Rent, a letter dated 16 June 2022 signed by the Respondent to the Applicant and various text messages between the parties from 26 May 2017 -10 August 2022. The Respondent lodged a written response to the application with copies of various text messages between the parties and various photographs including a photograph of a receipt stub for the tenancy deposit.
  
4. Parties agreed on the following:-
  - i. Parties entered into a tenancy agreement of the Property on 26 May 2017.
  - ii. The tenancy terminated on 10 August 2022.
  - iii. The Applicant paid the Respondent £600 deposit at the start of the tenancy.
  - iv. The Respondent did not lodge the deposit with a scheme administrator in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations").
  - v. There was no inventory taken at the start of the tenancy and;
  - vi. The deposit has not been returned to the Applicant.
  
5. However there was a dispute as to:-
  - i. Whether the Applicant had asked the Respondent not to lodge the deposit in terms of the 2011 Regulations.
  - ii. Whether the Applicant had caused damage to some of the contents of the Property and;
  - iii. Whether the Respondent was therefore entitled to deduct the cost of any damage from the deposit of £600.
  
6. The Tribunal decided to continue the case to a Hearing for evidence and legal submissions. The Tribunal asked parties to consider the law of contract and the mutuality of contractual obligations. The Tribunal asked parties to be prepared to address the Tribunal on whether, in circumstances where the Respondent had failed to comply with her legal obligations under the 2011 Regulations, she was then entitled to retain the deposit where damage had been caused by the Applicant. The Note from the CMD is referred to.
  
7. On 10 April 2023 the Respondent lodged various receipts and a statement dated 10 April 2023 from her painter David Maxwell. On 20 April 2023 the Respondent advised the Tribunal she had no further evidence to lodge.
  
8. A Hearing was fixed for 9 May 2023. The Tribunal then considered a request to postpone this Hearing from the Respondent as she was on holiday. The Tribunal postponed the Hearing on cause shown. The Tribunal noted that the

Respondent's dyslexia had prevented her from lodging the documents in proper form. The Tribunal decided that the new Hearing would proceed in person as proceedings would be managed more efficiently in the case were conducted in person. A new Hearing was assigned to proceed in person on 31 May 2023.

9. On 9 May the Applicant's representative submitted written submissions and two videos. The written submissions were sent to the Respondent by the Tribunal on 16 May. The Tribunal thereafter considered whether the videos could be lodged as evidence. After making enquiries with the Applicant's representative as to the content of the videos, the Tribunal decided to allow these to be lodged as evidence. Instructions were issued thereafter to both parties as to how to access the videos. The Respondent advised the Tribunal that she was unable to do so due to her dyslexia.

### **Hearing**

10. The Hearing proceeded in person on 31 May. Mr Maloney from Living Rent appeared on behalf of the Applicant, who was also in attendance. Ms Cameron appeared on her own behalf.
11. Before formally proceeding with the Hearing, the Tribunal showed the two videos to the Respondent to allow her to view these and take notes. The videos were stopped in places at the Respondent's request.
12. The Hearing then formally started with the Tribunal setting out the facts in agreement as established at the CMD. Parties confirmed their agreement to those facts. The main point of contention was whether the Applicant had damaged some of the contents of the Property which would then entitle the Respondent to deduct that from the deposit.
13. Before the Applicant gave evidence Mr Maloney referred the Tribunal to Clause 16 of the tenancy agreement in terms of which the Respondent agreed to comply with all relevant legislation affecting private sector residential tenancies. He also referred to Clause 7 which provided for an inventory of contents. This had not been provided by the Respondent. In short the Applicant's position was that the Respondent by failing to comply with the 2011 Regulations to protect the deposit had waived her right to retain the deposit. Without an inventory setting out the condition of the contents at the start of the tenancy, there was no agreement as to the condition of the contents. All that the Applicant was obliged to do was return the Property in the same state, fair wear and tear excepted.

### **Ms Erdal's Evidence**

14. The Tribunal heard evidence from the Applicant as to the condition of the contents at the start of the tenancy. She explained the bedroom carpet had big stains on it, that the whole flat needed painted and that the foam cushions in the

sofa were already deteriorating and crumbling in bits. There was a broken zip on one of the cushion covers. The sofa was covered with a throw. The three blinds didn't work properly. She could not pull them up properly and therefore could not air the Property. She took them down and stored them in the cupboard and put them back up when she left the Property. She explained the kitchen drawer came off one day; when she tried to stick it back on the mechanism was broken. From day one there had always been an issue with the electricity in the Property which meant that the fuses blew. She only kept the one bulb that worked in the living room fitting and throughout the tenancy had used side lights. She had used the washing machine the day before she left and explained that the washing machine door was not broken when she left, but that to close it properly, you had to push it until it clicked.

15. She also gave evidence about the circumstances surrounding the payment of the deposit. She denied she had asked the Respondent not to pay the deposit into an approved scheme as she had not been aware of the tenancy deposit scheme until nearer the end of the tenancy when one of her friends had mentioned it. She explained that although she had rented other flats and paid deposits, none of them had been put into an approved scheme. She explained the Respondent signed a receipt for the £600 deposit. There had been no discussion about the purpose of the deposit.
16. The Tribunal referred the Applicant to the text messages between her and the Respondent on 13 and 15 August 2022 in which the Respondent advised she would deduct £155 from the deposit, leaving £455 and which the Applicant accepted. She explained to the Tribunal that by this stage she just wanted to move on. Rentals were high and she just wanted to draw a line under the matter. She found the Respondent intimidating and that was why she did not turn up at the inspection. The Respondent wanted her to sign something, but she did not want to meet her in person.
17. Ms Cameron cross examined the Applicant. She put it to her that she had not received the two letters from Living Rent about the deposit and stated that she had always been willing to come to an agreement with regards to the deposit. With reference to one of the letters from Living Rent she put it to the Applicant that the Applicant had not sent her a text. The Tribunal asked Ms Cameron to explain the relevance of the letters. Ms Cameron explained that the Applicant and Living Rent were embarking on a malicious campaign against her.
18. Ms Cameron asked Ms Erdal why she, Ms Cameron should have to pay for 18 light bulbs and why the Applicant hadn't replaced them. The Applicant explained that most of the Property's light bulbs had blown during an apparent electrical surge (necessitating a change of fuse box) and the Applicant had chosen not to replace them. The Respondent disputed that as she would not lease a flat with light bulbs that did not work, but she had replaced the fuse box.
19. With regard to the blinds, Ms Cameron put it to the Applicant that the blinds worked perfectly and that the Applicant had damaged them by storing them in a

cupboard which was overflowing. The Applicant denied she had damaged the blinds.

20. Ms Cameron stated that the kitchen drawer was broken by the Applicant as reported to her about a year and a half into the tenancy. She asked how the kitchen drawer came to be broken. The Applicant explained she had pulled it open, the front came off and that the whole mechanism was broken.
21. Ms Cameron put it to the Applicant that she had allowed her dog to chew the cushions. Ms Cameron also put it to her that the Applicant had never mentioned to her that she had a dog. The Applicant denied both assertions. She explained that a zip was broken and that the foam under the cushion covers was crumbling when she moved in and 5 years later by the time she left, the foam had deteriorated further. She denied she had allowed her dog to chew the foam. The Applicant explained that the Respondent had offered to give her the sofa at the end of the tenancy for free, The Tribunal noted a text message where the Respondent had offered to give the sofa to the Applicant for free. Finally, the Applicant denied she had broken the washing machine door and repeated that the door had to click shut.

### **Ms Cameron's evidence**

22. Ms Cameron gave evidence on her own behalf. She felt she was a fair and honest person and would never have let out the Property without everything being in order. In hindsight she felt that a note of the condition of the house would have been helpful. However, if anything was broken during the tenancy she would fix it.
23. Ms Cameron's position was that the Applicant did not want the deposit to go into a scheme. On being questioned by the Tribunal she explained that none of her tenants wanted their deposits placed in a scheme. Ms Cameron emphasised it came down to trust between her and her tenants. She was a responsible Landlord and would always work things out with her tenants.
24. She advised all the light bulbs were working when the Applicant moved in. The electricity was working well. She had installed a new fuse box. All five bulbs in the living room were working. She would never have let the Property without working light bulbs. There was no problem with the electricity. The Applicant should have replaced the bulbs and left the Property in the condition she found it.
25. Ms Cameron gave evidence that the blinds were still up about 2-3 years into the tenancy. The Applicant had then put curtains up and placed the blinds in a cupboard which was overflowing. That caused the damage to the blinds. The blinds were bought about 2014-2015. They were wooden and heavy.

26. Ms Cameron claimed the Applicant's dog had chewed the sofa. Ms Cameron explained she had bought the sofa in about 2014.
27. She gave evidence that the bedroom carpet was in good condition with no stains and that she had had it cleaned before the Applicant moved in. The carpet was about 6 years old then and 11 years old when the Applicant moved out. The Applicant had so much heavy furniture that caused bald patches on the carpet. When the Applicant left the carpet was worn and stained. She had to throw it out.
28. Ms Cameron advised the Applicant had reported the kitchen drawer was broken about a year and a half into the tenancy. The front of the drawer had come off completely. Ms Cameron could not provide any evidence of the approximate date when the kitchen had been renovated, but this work certainly pre-dated her ownership of the Property.
29. In cross examination by Mr Maloney, Ms Cameron maintained she was entitled to make deductions for damage from the deposit. She had bought the sofa for about £700. She accepted that things would deteriorate and gave the shower as an example of an items she had replaced. She avoided answering Mr Maloney's question about whether it was reasonable to expect a tenant to pay for wear and tear by stating that she would have expected the Applicant to replace bulbs but when there was a problem with the electricity tripping she paid for that and got it fixed.
30. The Tribunal questioned the Respondent about the extent of her losses, noting that the Respondent had not lodged any receipts. Ms Cameron advised she would have had receipts at one time. The sofa and the carpet were put in the bin. The blinds weren't replaced. She had to go to B&Q twice to get the correct mechanism and front for the kitchen drawer which cost about £80 plus petrol. She paid about £20 to get the bulbs replaced.

### **Submissions**

31. The Tribunal then invited parties to make submissions. Mr Maloney referred the Tribunal to the written submissions he had lodged with the Tribunal. He submitted that the Short Assured Tenancy between the parties was a mutual contract. Ms Cameron had breached Clause 16 by failing to protect the deposit. By doing so she had denied the Applicant an opportunity of going to dispute resolution to resolve the issues surrounding the return of the deposit. By doing so, Mr Maloney submitted that the Respondent had relinquished her right to retain the deposit. He referred the Tribunal to the case of *Sams Omale v Armando Rodriguez Barcenas 2015SCFORT13*, a decision by Sheriff R Davidson who held that "*In the absence of compliance with the Tenancy Deposit Schemes (Scotland) Regulations, 2011, the retention by the defender of the pursuer's deposit being unlawful, it is inappropriate and contrary to public*

*policy for this court to make any order in favour of the defender to allow him to retain any part of the deposit not representing arrears of rent”.*

32. Mr Maloney further submitted that in any event the Respondent had no valid claim to retain the deposit, there being no written record of agreement between the parties that showed the condition of the Property at the commencement of the tenancy. The Applicant was only obliged to leave the Property in the same state as she found it, except for fair wear and tear.
33. In response Ms Cameron submitted she entered into a verbal agreement with the Applicant that she could keep the deposit and not lodge it. She felt she had been fair and reasonable. The Applicant had broken the lease by having a dog.

### **Findings in Fact**

34. In terms of Clause 16 of the tenancy agreement between the parties the Respondent agreed to comply with all relevant legislation affecting private sector residential tenancies. In terms of Clause 7 she agreed to provide an inventory of contents. The Respondent failed to comply with her obligations in terms of Clauses 16 and 7 of the tenancy agreement.
35. The Applicant did not cause damage to the blinds, the bedroom carpet, the sofa or the kitchen drawer. The Applicant left the Property in the same condition as she found it, fair wear and tear excepted.
36. The Respondent replaced and fixed the kitchen drawer. She disposed of the carpet, the sofa and the blinds.
37. Having regard to the terms of Tenancy Deposit Schemes (Scotland) Regulations, 2011, the Respondent's failure to lodge the Applicant's deposit into an approved tenancy deposit scheme within 30 days of its receipt was an unlawful act, the tenancy between the parties being a relevant tenancy under the 2011 Regulations.
38. The Applicant is entitled to the return of her £600 deposit.

### **Reasons for Decision**

39. The Tribunal considered the issues set out in the application together with the documents lodged in support by both parties. The Tribunal listened carefully to the evidence of both parties. The Tribunal preferred the evidence of the Applicant. She gave her evidence in a calm and clear manner as to the condition of the Property at the commencement of the tenancy. Further the Tribunal found her to be credible when she stated she did not know about the tenancy deposit

scheme when she handed over her deposit to the Respondent at the start of the tenancy and that she had not asked the Respondent to keep the deposit. On the other hand, the Tribunal did not form a good impression of the Respondent. She interrupted the proceedings on occasions and preferred to deviate from pertinent matters. The Tribunal did not find her credible when she claimed that the Applicant had asked her to keep the deposit, which she stated all her tenants had asked her to do. The Tribunal formed the opinion that that was the way the Respondent operated regardless. However even had the Applicant asked her to retain the deposit, the Respondent was under a legal obligation to place the deposit with a scheme administrator. By doing so, this case with would have been avoided.

40. There was no evidence before the Tribunal to show that the Respondent had incurred any losses. She produced no receipts for any of the items. On her own evidence she had disposed of a number of the items and had not replaced them. In any event the Tribunal preferred the evidence of the Applicant as to the condition of the blinds, sofa and the bedroom carpet at the beginning of the tenancy. Any further deterioration in the condition of the Property at the end of the tenancy was caused by wear and tear for which the Applicant, even had the deposit been placed in a scheme administrator, could not be found liable.

41. The Tribunal accepted Mr Maloney's submission that the Respondent had relinquished her right to retain the deposit by her failure to comply with her own obligations with reference to *Sams Omale v Armando Rodriguez Barcenas 2015SCFORT13*. The Tribunal accept it would be contrary to public policy to uphold the Respondent's case that the Applicant had breached the tenancy agreement by damaging certain items in the Property, when she herself had unlawfully failed to place the deposit into the hands of a scheme administrator in terms of the 2011 Regulations. The Respondent cannot be seen to be benefitting from her own failures to comply with her legal obligations. By doing so she has been unjustifiably enriched by retaining the Applicant's deposit. In the circumstances the Respondent has no entitlement to retain any of the Applicant's deposit.

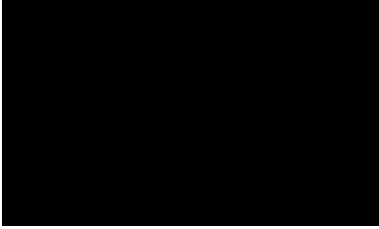
### **Decision**

42. The Tribunal made an order for payment in favour of the Applicant. The decision of the Tribunal was unanimous.

### **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.**





4 June 2023

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Legal Chair

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Date