



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/23/0614**

**Re: Property at 5 HILTON STREET, ABERDEEN, AB24 4QT (“the Property”)**

**Parties:**

**Miss SVEA NÖLL, 109 LESLIE TERRACE, ABERDEEN, AB25 3XD (“the Applicant”)**

**Mr JON STEWART, 262 GREAT WESTERN, ABERDEEN, AB10 6PJ (“the Respondent”)**

**Tribunal Members:**

**Andrew Upton (Legal Member) and Sandra Brydon (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent is liable to make payment to the Applicant in the sum of FOUR HUNDRED AND SIXTY-FIVE POUNDS AND NINETY SEVEN PENCE (£465.97) STERLING**

**Findings in Fact**

1. The Applicant was the tenant, and the Respondent the landlord, of the Property under and in terms of a Private Residential Tenancy which commenced on 1 September 2022 (“the PRT”).
2. The Applicant paid a tenancy deposit of £800 to the Respondent on or around 17 September 2022 (“the Deposit”).
3. The PRT terminated on 30 November 2022.
4. Following termination of the PRT, the Respondent repaid £333.03 to the Applicant, being part of the Deposit.

## Findings in Fact and Law

1. In terms of clause FIFTH of the PRT, the Respondent is under contractual obligation to return the Deposit to the Applicant after deduction of any sums due to the Respondent in respect of breakages, dilapidations, rent, electricity, or any other charges.
2. In terms of clause TWENTY-THIRD of the PRT, the Applicant was responsible for payment of Council Tax for the Property for the period of her occupation.
3. The Respondent is under contractual obligation to repay the sum of £466.97 to the Applicant, being the balance of the Deposit.

## Statement of Reasons

1. This Application called for a Hearing by teleconference on 2 October 2023. The Parties both participated in the Hearing.
2. In this Application, the Applicant seeks payment of the sum of £465.97, being the outstanding balance of a tenancy deposit that was paid by her to the Respondent. The following matters were agreed by the parties prior to the Hearing:-
  - a. The Applicant was the tenant, and the Respondent the landlord, of the Property under and in terms of a Private Residential Tenancy which commenced on 1 September 2022 (“the PRT”).
  - b. The Applicant paid a tenancy deposit of £800 to the Respondent on or around 17 September 2022 (“the Deposit”).
  - c. The PRT terminated on 30 November 2022.
  - d. Following termination of the PRT, the Respondent repaid £334.03 to the Applicant, being part of the Deposit.
  - e. In terms of clause FIFTH of the PRT, the Respondent is under contractual obligation to return the Deposit to the Applicant after deduction of any sums due to the Respondent in respect of breakages, dilapidations, rent, electricity, or any other charges.
  - f. In terms of clause TWENTY-THIRD of the PRT, the Applicant was responsible for payment of Council Tax for the Property for the period of her occupation.
3. The crux of this action is that the Respondent contends that he was charged for council tax for the Property by the local authority in respect of the Applicant’s period of occupation, and that he paid that council tax. He claims that he was entitled to withhold the sum of £465.97 from the Deposit to pay that Council Tax.
4. The Applicant’s position was that, if the Respondent had truly been charged for and paid Council Tax for her period of occupation then that would be a reasonable deduction. However, the Respondent had provided no documentary evidence of what the Council Tax charge for that period was, or proof that he had in fact paid it. She accepted that she had not been charged for Council Tax, and had not paid it.

5. At the outset of the Hearing, the Tribunal made enquiries with the Respondent regarding his failure to produce documentary evidence to substantiate his position. The Respondent's position was that he had lost the council tax demand. When asked why he had not requested another, his answer seemed to be simply that it was difficult to speak with the local authority. When asked about producing copy bank statements, he asserted that his bank did not issue statements at all. When pressed further, he indicated that his bank did, in fact, prepare and issue statements electronically, but that he had not lodged them. He then suggested that he could send them electronically following the Hearing. The Tribunal drew his attention to the timescale for lodging documents, which he asserted that he was unaware of. The Respondent suggested that he had contacted the Tribunal on the morning of the Hearing to discuss lodging papers electronically. He had no explanation for his decision to wait until the morning of the Hearing, some three months after the second Case Management Discussion, to make enquiries about how to lodge electronic documents. The Respondent asserted that the Council tax payable for the Property was £2,448.67 per year, but produced no Council Tax demand for the period we were concerned with.
6. The Respondent has failed to lodge documents in support of his assertion that he was charged for council tax for the Property and that he paid it. His stated position seemed to be that he had no such documentary vouching, notwithstanding his having had three months since the last CMD to make enquiries with the local authority and obtain it. The Respondent indicated that he could produce electronic bank statements showing payments having been made, but gave no explanation for having not taken steps to do so. Put simply, the Respondent had made no effort to prepare for today's Hearing since it was fixed, nor to familiarise himself with the Tribunal's Rules of Procedure. His poor choice in that regard is not justifiable cause to allow relief to the Respondent for his failure to comply with the Rules. In the circumstances, the Tribunal was neither minded to adjourn the Hearing to let the Respondent get his house in order, nor to allow him to lodge documents late. He has had ample opportunity to produce documents to vouch his position, and his failure to do so is a reflection of the level of importance that he attributed to these proceedings.
7. The payment of council tax was for the Respondent to vouch. He was unable to give clear evidence of the sum he was charged, the sums he paid, when he paid them, the period they related to or any other evidence showing or tending to show that he made payments of sums that the Applicant was properly liable for. That being the case, the Tribunal was not satisfied from the evidence heard that the Respondent had made the council tax payments that he claimed.
8. It follows that, having not been satisfied that the Respondent was entitled to retain sums from the Deposit to apply to Council Tax payments, the Tribunal was satisfied that the balance of the Deposit fell to be returned to the Applicant. The Tribunal unanimously granted the payment order claimed.

## 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.

# Andrew Upton

2<sup>nd</sup> October 2023

Legal Member/Chair

\_\_\_\_\_  
Date