



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/20/1832

Re: Property at 40 Upper Craigour, Edinburgh, EH17 7SF (“the Property”)

Parties:

Miss Judith Toth, 7/14 Western Harbour Midway, Edinburgh, EH6 6LE (“the Applicant”)

Julie Dixon, 40 Upper Craigour, Little France, Edinburgh, EH17 7SF (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

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 in the sum of £288.71.

Background

1. By application dated 24 August 2020 the Applicant applied to the Tribunal for an order for payment on the grounds that the Respondent had retained the deposit paid by her at the commencement of her short assured tenancy. The Applicant provided the Tribunal with a copy of the tenancy agreement, copy emails and a bank statement in support of the application.
2. In subsequent correspondence the Applicant requested that Miss Michelle Cooper be added as a Joint Applicant.
3. By Notice of Acceptance dated 13 October 2020 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

4. The Respondent submitted written representations to the Tribunal by post and email on 11 November 2020.
5. The Applicant submitted further written representations by email on 24 November 2020.
6. A CMD was held by teleconference on 25 November 2020 conjoined with a further application between the same parties under reference PR/20/1719. At that time, it was held that Miss Cooper should not be a party to the application as she was not a tenant and the Tribunal allowed the application to be amended to remove her as a joint applicant. The Tribunal refused the Respondent's motion to dismiss the application on the grounds it had been wrongly raised in joint names. The CMD was continued for parties to provide more focussed submissions and a further CMD was assigned and the Tribunal issued Directions to the parties.
7. By email dated 23 December 2020 the Applicant submitted further written representations.
8. By email dated 23 December 2020 the Respondent submitted further written representations including a new application under case reference CV/20/2644 which was conjoined with the existing applications.
9. A further CMD was held by teleconference on 19 January 2021 conjoined with case references CV/20/1832 and CV/20/2644. In light of the disputed issues in the other conjoined cases and the wish of the parties to have all the cases heard together the case was adjourned to a full hearing of the Tribunal.

The Hearing

10. A hearing was held by teleconference on 3 June 2021. A further application involving the same parties under case reference CV/21/0687 was also conjoined to be heard with the three existing cases. The Applicant attended personally supported by Miss Michelle Cooper. The Respondent attended personally and was represented by her husband Mr Neil Dixon.
11. By way of a preliminary matter the Tribunal noted that the Respondent had once again in her written representations asked that the application be dismissed on the ground that it had been amended to remove Miss Cooper as a party. The Tribunal pointed out that the Respondent's motion had already been refused at the CMD on 25 November 2020 and therefore the matter could not be raised again.
12. It was not disputed that the Respondent had retained the Applicant's deposit of £750.00 which had not been lodged with a tenancy deposit scheme. The Respondent claimed that she was due unpaid rent as well as payment for damage caused by the Applicant. As the claim for damage was the subject of case reference CV/20/2644 the Tribunal restricted its consideration of facts in this application to the issue of unpaid rent.

13. The Applicant accepted that some rent was due. Her position was that on 22 July she sent an email to the respondent advising that she was leaving the property. Due to her personal circumstances, her father having just died, she asked the Respondent to correspond with her friend Miss Cooper. The Respondent replied on 26 July requesting Miss Cooper provide a leaving date. Miss Cooper emailed the Respondent on 27 July to advise that the Applicant was moving out on 10 August 2020. The Respondent replied by email on 29 July saying "Let's do 10th August at 18.00. Give my best to Julie and nice to have known her."
14. The Applicant calculated that on the basis of the email response from the Respondent she was due to pay rent for the period from 27 July 20 10 August amounting to £253.12 and was therefore due £478.80.
15. The Respondent's position was that the contractual position was that the Applicant was required to give one month's notice. She gave notice on 22 July that she was leaving and therefore the tenancy ended on 21 August. The communication with Miss Cooper regarding the moving out date did not, according to the Respondent, amend the contractual terms. The Applicant was therefore due to pay rent for the period from 27 July to 21 August a period of 26 days amounting to £461.29.

Findings in Fact

16. There was a contractual agreement between the parties that the Applicant was required to give the Respondent one month's notice of termination of the tenancy.
17. The Applicant gave notice of her intention to vacate the property on 22 July 2020.
18. The earliest date the tenancy could end without the explicit consent of the Respondent was 21 August 2020.
19. Miss Cooper advised the Respondent that she and the Applicant were vacating the property and would hand over the keys on 10 August 2020.
20. The Respondent acknowledged that 10 August at 18.00 was a suitable date and time for the handover of the keys.
21. The Respondent did not explicitly agree to an early termination of the tenancy.

Reasons for Decision

22. The Tribunal was satisfied that the contractual position as agreed between the parties was that the Applicant was required to give the Respondent one month's notice of termination of the lease. Were it not for the Respondent's evidence in this regard the Tribunal would have had some doubt as to whether

the Applicant's email of 22 July constituted one month's formal notice. However, given that it was accepted as such by the Respondent the Tribunal sees no need to interfere in this regard. It therefore follows that the notice period would expire as suggested by the Respondent on 21 August 2020 and the Applicant would be due to pay rent up to that date.

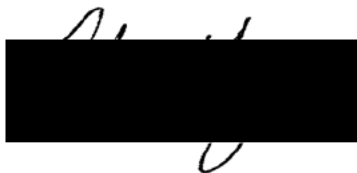
23. It would have been possible for the parties to have agreed an earlier termination date but that would have required an explicit amendment to the contractual agreement. The Tribunal was unable to conclude from the evidence of the parties and their written communications that any such amendment had been agreed. It was open to the Applicant to remove herself from the property at any time up to 21 August. She could arrange to return the keys at any time up to that date but that would not remove her liability to pay the rent unless and until the Respondent advised her that she was relieved of that obligation. The Tribunal was therefore satisfied that as the Applicant had not paid rent for the period from 27 July to 21 August the Respondent was entitled to withhold the sum of £461.29 from the deposit leaving a balance due to the Applicant of £288.71.

Decision

24. The Tribunal finds the Applicant entitled to an order for payment by the Respondent in the sum of £288.71.

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**

**5 June 2021
Date**