

Housing and Property Chamber
First-tier Tribunal for Scotland



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/22/0078

Re: Property at 2/1 25 Huntingdon Road, Glasgow, G21 1RS (“the Property”)

Parties:

Mr Rahim Mukhtar, Fettykil House, Norman Place, Leslie, KY6 3AR (“the Applicant”)

Mr Shengchun Yao, 10 Allsop Court, Kilmaurs, Kilmarnock, KA3 2LZ (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member)

Decision (in absence of the Applicant)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) refused the application.

Background

1. An application was received by the Housing and Property Chamber dated 10th January 2022. The application was submitted under Rule 111 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on the Applicant seeking the return of his deposit of £200.
2. On 3rd February 2022, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent by letterbox service and by post. This was evidenced by Certificate of Intimation dated 3rd February 2022.
3. A CMD was held on 15th March 2022 at 2pm by teleconferencing. The Applicant attended and represented himself. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent had lodged a submission stating that he does not consider that a deposit needs to

be lodged within an approved scheme as the tenancy is not a Private Rented Tenancy ("PRT"). He also stated that the deposit was in case rent was due in term of the lease. The correct lease to use was a PRT not the lease that was signed by parties. The Tribunal noted that a tenancy created after 1st December 2017 it is a PRT. The fact that the lease is not written as a PRT is not relevant as per section 3 of the Private Housing (Scotland) Act 2016. The Applicant confirmed that the Respondent did not live in the Property with him. The Tribunal continued the case to allow for the Respondent to lodge the deposit in an approved scheme. The deposit schemes have the appropriate systems to deal with such disputes regarding the return of a deposit. The Tribunal issued a direction for the deposit to be lodged in a scheme.

4. On 14th April 2022 all parties were written to by email with the date for the Case Management Discussion ("CMD") of 9th May 2022 at 10am by teleconferencing.
5. On 1st April the Applicant emailed a copy of the Deposit Protection Certificate from My Deposits Scotland stating that £200 was lodged on 31st March 2022.
6. On 29th April 2022, the Applicant further lodged the Landlord's duty to provide information to the Tenant.
7. This case is conjoined with PR/21/2789.

The Case Management Discussion

8. A CMD was held 9th May 2022 at 10am by teleconferencing. The Applicant was not present and not represented. The Respondent was present. The Tribunal proceeded in terms of Rule 29 of the Rules without the Applicant present.
9. The Tribunal noted that the deposit had been lodged in an approved scheme as per the direction of 15th March 2022. A copy of this certificate had been lodged with the Housing and Property Chamber by the Applicant. The Respondent has not tried to claim it yet. The Tribunal noted that the disagreement of who should have the deposit returned to them was now a matter for the deposit scheme to determine. Both parties can seek advice on this point. Given that this is an issue for the deposit scheme to determine the Tribunal is no longer required to decide upon the point of return of the deposit. There was no evidence supporting a loss due to the deposit not being returned beyond that of the deposit value itself. The use of the wrong tenancy agreement is significant as the Private Rented Tenancy agreement prevailed even though this was not used by the parties. The Tribunal is considering the lateness of the deposit being lodged under the conjoined application of PR/21/2798. The Tribunal determined that it was appropriate to refuse the application. The Respondent noted that he has now started to use the Government Model PRT.

Findings and reason for decision

10. A Private Rented Tenancy Agreement commenced 17th August 2021.

11. A deposit of £200 was paid by the Applicant to the Respondent at the beginning of the Tenancy.
12. The deposit was not lodged in an appropriate scheme. The Respondent was issued a direction to lodge the deposit in an appropriate scheme within 21 days of 15th March 2022. The deposit was lodged with My Deposits Scotland on 31st March 2022.
13. Neither party have yet put a claim in for the deposit. Any determination about the appropriateness of the return of the deposit to either party will be done by the deposit scheme.
14. The breach of the Tenancy Deposit Regulations is being dealt with under the conjoined case PR/21/2798.
15. The incorrect lease was not significant as the lease defaults to a PRT in terms of the Private Housing (Tenancies)(Scotland) Act 2016.
16. There was no loss evidenced for the deposit not being returned beyond the amount of the actual deposit. The return of the deposit will be decided by the deposit scheme.
17. The application was refused

Decision

18. The Tribunal refused the application.

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.

Gabrielle Miller

Legal Member/Chair

9th May 2022

Date

