



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 1988 (Act)**

Chamber Ref: FTS/HPC/CV/22/2486

**Re: Property at Morvern Apt, Appin House, Appin, Argyll and Bute, PA38 4BN
("the Property")**

Parties:

**Mr David Poole, Mrs Lynda Poole, 1 Bealach-Na-Mara, Port Appin, Argyll and
Bute, PA38 4DR ("the Applicant")**

**Mr David Mathieson, Appin House, Appin, Argyll and Bute, PA34 4BN ("the
Respondent")**

Tribunal Members:

Alan Strain (Legal Member) and Helen Barclay (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that the Respondent shall pay the Applicants the sum of
£500.**

Background

This is an application under Rule 70 of *The First-tier Tribunal for Scotland
Housing and Property Chamber (Procedure) Regulations 2017 (Rules)* and
section 16 of the Act for an order for repayment of an alleged rent deposit.

The Tribunal had regard to the following documents:

1. Application received 25 July 2022;
2. Supporting documents lodged with application including bank statement showing payment of £500 on 6 December 2007 and emails from the deposit protection schemes confirming no deposit lodged;
3. Letters of 9 and 23 July 2022 from Respondent to Applicant;

4. Written Representations from Applicant dated 24 October 2022;
5. Email of 18 November 2022 from Applicant seeking attendance of supporter;
6. Written Representations from Respondent dated 10 December 2022;
7. Written Representations from the Respondent dated 11 December 2022;
8. Email and Mandate from Respondent dated 6 March 2023;
9. Written Representations and supporting documents from Applicant received 7 March 2023;
10. Written Representations from Applicant received 22 June 2023;
11. Written Representations enclosing additional tenancy documents received 6 July 2023.

Hearing

The case called for an in person Hearing on 6 July 2023. Mr Poole participated and represented the Applicants. He was accompanied by his granddaughter who also gave evidence. The Respondent participated and was represented by his son Mr Ewan Mathieson who gave evidence on his behalf.

The Tribunal explained the purpose of the Hearing and the procedure the Tribunal would follow to the Parties at the outset. There was one single issue in dispute, namely, whether or not the Applicants had paid a deposit of £500 at the commencement of the tenancy. The Applicants position was that they had paid the deposit by cheque on 6 December 2007. A bank statement was produced in support of this along with correspondence from the Applicants' bank informing them that due to the passage of time the original cheque could not be provided.

The Respondent's position was that no deposit was paid.

Evidence

The Tribunal heard evidence from Mr Poole, his granddaughter, Mr Mathieson and Mr Ewan Mathieson.

Mr Poole's evidence was clear that he and his wife had paid a cheque to the Respondent prior to commencement of the tenancy. It was not possible to recover a copy of the cheque due to the passage of time. This cheque was for a deposit of £500.

There had been no written tenancy agreement in respect of the Property, however, one was entered into when the Applicants moved into a subsequent apartment (Appin). The Respondent had produced this tenancy agreement and it made no reference to a deposit.

Mr Poole's evidence was that they had agreed verbally with the Respondent's wife that the deposit would be transferred across in respect of the new tenancy.

The subsequent tenancy ended on 30 June 2022 and he sought repayment of the deposit.

The Respondent's recollection of events surrounding the tenancy was not good. The Tribunal were informed that he suffered from early onset dementia. His late wife predominantly dealt with the tenancies that they had.

Mr Ewan Mathieson spoke to the other tenancies which the Respondent had entered into and where deposits were requested this was reflected in the tenancy agreement. He drew a distinction with the written tenancy relating to the Applicants' tenancy in the Appin apartment which made no reference to a deposit having been paid and had been prepared and signed in the Respondent's solicitors office.

Submissions

Both Parties made submissions to the Tribunal.

Findings in Fact

The Tribunal considered the oral and documentary evidence from the Parties. In so far as material the Tribunal made the following findings in fact:

1. The Parties let the Morvern apartment under a verbally agreed tenancy with effect from December 2007;
2. The Applicants paid a deposit of £500 to the Respondent by cheque on 6 December 2007;
3. The deposit transferred by agreement reached verbally when the Applicants entered into the subsequent tenancy in the Appin apartment on 1 June 2009;
4. The Appin tenancy ended on 30 June 2022;
5. The deposit was not repaid to the Applicants.

Decision and Reasons

The Tribunal preferred and accepted the evidence of Mr Poole. His evidence was credible and reliable. Whilst he did not have the physical cheque he was able to produce the bank statement which showed the cheque for the deposit and the subsequent cheque for the first month's' rent being paid.

His recollection of events was clear.

The Respondent's evidence was unclear. He had little recollection of events.

Mr Ewan Mathieson's evidence was hampered by the fact that he had no direct knowledge or dealings with the tenancy. Much of what he was saying was based on assumptions rather than direct knowledge.

The Tribunal accordingly found that the deposit of £500 had been paid and was now due to be repaid following the termination of the tenancy.

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.

Alan Strain

6 July 2023

Legal Member/Chair

Date