



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies)(Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/20/1107

Re: Property at 6 Birchtree Place, Thornton, Kirkcaldy, KY1 4AU (“the Property”)

Parties:

Mrs Elizabeth Marley, 12 Netherby Park, Glenrothes, KY6 3PL (“the Applicant”)

Ms Natalie Chapman, 6 Birchtree Place, Thornton, Kirkcaldy, KY1 4AU (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Jane Heppenstall (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 £2617.46

Background

1. By Application dated 18 April 2020 the Applicant applied to the Tribunal for an order for payment by the Respondent in respect of alleged rent arrears arising from the Respondent’s tenancy of the property. The Applicant submitted a copy of the Tenancy agreement and rent statement, in support of her application.
2. The Applicant’s husband Keith Marley confirmed his consent to the application being in the sole name of the Applicant although the tenancy agreement was in joint names.
3. By Notice of Acceptance dated 3 June 2020 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned.

4. Intimation of the Case Management Discussion was sent to the Applicant by post on 6 July 2020 and was served on the Respondent by Sheriff Officers on 7 July 2020.
5. By email dated 24 July 2020 the Respondent requested a postponement of the Case Management Discussion. The Tribunal considered the request and refused it as the Respondent did not produce a medical certificate.
6. A Case Management discussion was held by tele-conference on 10 August 2020. Both parties were in attendance. The Respondent had previously requested an adjournment on account of concerns regarding her mental health. This had been refused as no medical certificate had been produced. The Respondent indicated she was again seeking an adjournment and said that her mental health nurse had sent an email to the Tribunal explaining her condition. The Tribunal was unable to find any trace of any email and determined to proceed with the CMD on being satisfied that it appeared that the Respondent was able to participate in the proceedings.
7. As the Applicant wished to amend the sum claimed and as the Respondent disputed the sum said to be due, the application was continued to a full hearing of the Tribunal. The Applicant was directed to submit an application to amend the sum claimed in accordance with Rule 14A of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Rules"). The Respondent was directed to submit any bank statements she wished to rely on in advance of the hearing if she was challenging the amounts said to have been paid by her to the Applicant.
8. By email dated 26 August 2020 the Applicant submitted an application to the Tribunal to amend the sum claimed to £2750.00.
9. By email dated 21 September the Respondent submitted written representations claiming that the sum of £132.54 should be deducted from the sum claimed by the Applicant.

The Hearing

10. A hearing was held by tele-conference on 23 September 2020. Both parties were in attendance. The Respondent advised the Tribunal she had vacated the property on Tuesday 8 September 2020. The Applicant confirmed she had obtained the keys to the property on 10 September 2020.
11. By way of a preliminary matter the Tribunal confirmed with the Respondent that she had received intimation of the application to amend the sum claimed to £2750.00. The Respondent confirmed that she had. The Tribunal on being satisfied that the application to amend complied with Rule 14A of the 2017 Rules allowed the amendment.
12. The Tribunal enquired from the Respondent if she was continuing to dispute the sum said to be due. The Respondent said that she had gone back to her

bank statements and she now accepted that the payments said to have been made and as shown on the rent statement were correct. She accepted that the rent due was correctly calculated as being £2750.00.

13. The Tribunal referred the Respondent to her email of 21 September and explained that whilst it was possible that the amounts claimed by the Applicant in her claim to Safe Deposits Scotland could be upheld through the scheme's ADR scheme it was not necessarily the case that the claim would be fully upheld and therefore the Tribunal could not deduct the sum suggested by the Respondent from the sum claimed.
14. The Tribunal noted from the Applicant that she was prepared to restrict the sum claimed to £2617.46 if the Respondent agreed to the deposit being retained by the Applicant.
15. The Respondent advised the Tribunal that she accepted that there had been some damage to the property and that although she had until 2 November 2020 to object to the deposit being returned to the Applicant, she was prepared to contact Safe Deposits Scotland after the hearing and confirm to them that the Applicant could have the whole deposit released to her. The Respondent gave an undertaking to the Tribunal that she would confirm to Safe Deposits within the next two days that the whole deposit could be released to the Applicant.
16. The parties asked the Tribunal to make an order for payment by the Respondent to the Applicant in the sum of £2617.46.

Findings in Fact

17. The parties entered into a Private Residential Tenancy that commenced on 2 December 2018 at a rent of £500.00 per calendar month.
18. The Respondent vacated the property on or about 8 September 2020.
19. The rent due by the Respondent at the date of leaving amounted to £2750.00.
20. The Applicant has requested payment to her of the Respondent's deposit of £500.00 from Safe Deposits Scotland.
21. £132.54 of the deposit is claimed in respect of rent arrears.
22. The Respondent has agreed that the whole deposit be paid to the Applicant.
23. The Applicant wished to restrict her claim to £2617.46.

Reasons for Decision

24. The Tribunal was satisfied from the oral and written submissions and documentary evidence submitted by the Applicant together with the oral submission by the Respondent that she accepted that the sum claimed by the Applicant was correct that the amended sum claimed by the Applicant had been correctly calculated.

25. The Tribunal had some concerns about reducing the sum to be awarded to take account of the rent arrears sought in the Applicant's claim for payment of the Respondent's deposit from Safe Deposits Scotland. However, as both parties wished the sum to be awarded to be reduced and as the Respondent gave an undertaking to the Tribunal to confirm to Safe Deposits Scotland within two days her agreement to the whole deposit being released to the Applicant, the Tribunal was persuaded to reduce the sum to be awarded to the Applicant to £2617.46.

Decision

26. The Tribunal finds the Applicant entitled to an order for payment by the Respondent in the sum of £2617.46.

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**

**23 September 2020
Date**

Graham Harding