



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/23/0124

Re: Property at The Thatched Croft, 6, Gartymore, KW8 6HJ (“the Property”)

Parties:

Miss Becky Farrall, 156 West Helmsdale, Sutherland, KW86HH (“the Applicant”)

Mr Adrian Kandel, 57 Beech Avenue, Nairn, IV124ST (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Order for Payment against the Respondent in favour of the Applicant in the sum of £500.

Background

1. The Applicant submitted an application under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The Applicant sought an order for payment in respect of the deposit paid by her to the Respondent.
2. A case management discussion (“CMD”) took place on 11 April 2023. The Tribunal issued a Note and Notice of Direction following that CMD.
3. On 7 May 2023, the Applicant submitted video evidence along with details of witnesses she intended to call to give evidence.

The Hearing

4. The Hearing took place by conference call. The Applicant joined the conference call. The Respondent did not join the conference call and the Hearing proceeded in his absence. The Applicant gave evidence. She explained that

when the tenancy ended on 31 July 2022, she asked the Respondent for return of her deposit. She did not receive a response. She sent a further message to the Respondent on 22 August 2022 and received a response from the Respondent indicating that he had not yet attended at the property. There was no mention of the deposit in that reply. The Applicant sent further messages to the Respondent on 7, 26 and 30 September, 8 October and 3 and 8 December 2022. She did not receive a response to those messages. In relation to the issues raised by the Respondent at the CMD, the Applicant did not accept that any of those issues justified the Respondent in withholding payment of her deposit. Taking each issue in turn, the Applicant's evidence can be summarised as follows:-

- a) There was a steep incline to the property and that incline was covered in gravel chips. At times the chips could be displaced because of vehicle traffic. She discussed the driveway with the Respondent during the period of the tenancy and he described the replacement of chips being wear and tear. She did not dispute that the Respondent may have replaced chips on the driveway before he sold the property, but that would have been to make it look more presentable. She did not accept any responsibility for replacing the chips.
- b) She accepted that there was an obligation on her to cut the grass and she did so. She referred to the video evidence lodged which shows the grass having been cut just before she vacated the property. The Respondent told her that he had not been at the property to inspect it for some time after she left. During that period, the grass will have grown again. However, at the date of her departure, the grass had been cut and was in good order.
- c) There was an isolator switch outside the bathroom, which operated the shower. At the point of her departure from the property, the switch and the shower were in working order. If there had been an issue with the shower, she would have reported that. For example, she reported to the Respondent that the front door lock was broken. The Respondent told her to lock the door from the inside and to climb in and out of the window to access the property. She had reported other repairing issues throughout the tenancy and the Respondent arranged repairs. Had there been an issue with the operation of the shower, she would have had no hesitation in reporting that.
- d) She is a professional cleaner. She cleaned the outside of the windows during summer 2022 and cleaned the inside of the windows immediately before she vacated the property.
- e) She steam cleaned the wooden flooring, including the living room which was an open plan living room and kitchen. She referred to the video footage lodged which was taken once she had removed almost all of her belongings.
- f) On one occasion around February or March 2022, the Respondent had attended at the property to effect a repair. She asked to borrow the Respondent's ladders so that she could replace some lightbulbs. She used LED lightbulbs, which normally last a few years. The Respondent told her

that there were 2 lights in the kitchen which didn't work. With the exception of those 2 lights, all lights were operational when she left the property.

Findings in Fact

5. The parties entered into a private residential tenancy which commenced 16 November 2020 and ended 31 July 2022.
6. The Applicant paid a deposit of £500 to the Respondent.

Reasons for Decision

7. Having heard from the Applicant, the Tribunal indicated that no further evidence was required. The Tribunal found the Applicant credible and reliable. None of her evidence was contradicted. The Respondent did not participate in the Hearing, and did he lodge any documentation to support his position that he had incurred expenditure. The Tenancy agreement was very brief. It obliged the Applicant to cut the grass and to pay for items which were not considered wear and tear. The Applicant lodged video evidence which showed the condition of the property and the grass cutting at the point of her departure from the property.
8. This case concerned the return of the Applicant's deposit. The Tribunal noted that the Respondent did not secure the Applicant's deposit in an approved scheme. The Tribunal observed that, had the Respondent complied with his obligation to secure the deposit, both parties would have had the opportunity to have the dispute over the deposit adjudicated upon by the scheme. By failing to secure the deposit, that remedy was not available to the Applicant.

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.

Nicola Irvine

Legal Member/Chair

20 July 2023
Date