

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 Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 and under Section 16 of the Housing (Scotland) Act 2014

Chamber Refs: FTS/HPC/PR/20/0484, FTS/HPC/CV/20/1923 and FTS/HPC/CV/202322

Re: Property at 50 West End Drive, Bellshill, ML4 3AS (“the Property”)

Parties:

Mrs Jessica Walker, 49 Cairnlea Gardens, Bellshill, ML4 2JT (“the Applicant in Refs PR/20/0484 and CV/20/1923 and the Respondent in Ref CV/20/2322”); and

Mr David Gemmell, 41 Kenilworth Crescent, Bellshill ML4 3EQ (“the Respondent in Refs PR/20/0484 and CV/20/1923 and the Applicant in Ref CV/20/2322”),

Tribunal Members:

**G McWilliams- Legal Member
A Khan - Ordinary Member**

Decisions

1. The Tribunal, having considered all of the available evidence and the submissions of the Applicant, refuses Mrs Jessica Walker’s Applications under Refs PR/20/0484 and CV/20/1923 and makes an order for payment by Mrs Jessica Walker to Mr David Gemmell of the sum of £1800.00 in respect of Application Ref CV/20/2322.

Background

2. Mrs Walker had lodged two Applications with the Tribunal in terms of Rule 103 (Application for order for payment where a landlord has not paid a deposit into an approved scheme), and in terms of Rule 70 (Application for

civil proceedings in relation to an assured tenancy under the Housing (Scotland) Act 1988) of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure (“the 2017 Rules”) under Refs PR/20/0484 and CV/20/1923, respectively. In the latter Application Mrs Walker seeks payment in respect of a deposit of £450.00 which she said she had paid. In the former Application Mrs Walker seeks that the Tribunal make a monetary award of monies to be paid to her by Mr Gemmell as a sanction for not lodging a deposit in an approved Deposit Scheme. Mr Gemmell had lodged an Application in terms of Rule 70 of the 2017 Rules under Ref CV/20/2322, in respect of claimed rent arrears, in the sum of £1800.00, for the period March to June 2020, inclusive.

Case Management Discussion

3. A Case Management Discussion (“CMD”) proceeded remotely by telephone conference call on 18th November 2020. Reference is made to the Notes on the CMD.

Hearings

4. An evidential Hearing was originally scheduled to take place remotely by telephone conference call on 18th February 2021, and then postponed. The Hearing then proceeded on 15th April 2021. Mrs Walker and Mr Gemmell attended. Both parties had lodged written representations, with supporting papers, including copy messages and Bank statements, in advance of the CMD and Hearings.

Evidence and Submissions

5. The Tribunal and the parties agreed that evidence would be given in respect of Applications Refs PR/20/0484 and CV/20/1923 and then Application Ref CV/20/2322.
6. The parties were also agreed that their tenancy agreement began on 1st July 2015.
7. Mrs Walker gave evidence. She stated that, through her mother, she had paid the sum of £5850.00 to Mr Gemmell on 5th August 2016. She said that this amount comprised 12 months rental payments, each in the sum of £450.00, and a deposit of £450.00. She stated that this payment brought her rent up to date, following the commencement of the tenancy in July 2015. She submitted that Mr Gemmell had not protected the deposit. She said that Mr Gemmell had not lodged a copy of his Bank statement for the end of August 2016 but that she had made another rental payment then. Mrs Walker said that she had left the Property, and ended the tenancy, by 30th June 2020. She said that she had posted a letter and the keys to Mr Gemmell at that time.
8. Mr Gemmell gave evidence. He stated that Mrs Walker had paid the said sum of £5850.00 in respect of 13 months’ rent. He said that Mrs Walker had

not paid a deposit. He said that he received a blank letter from Mrs Walker in July 2020, which did not have any contents. Mr Gemmell stated that he was first made aware that Mrs Walker had formally ended the tenancy at the CMD on 18th November 2020 and that he was entitled to be paid rent until that date. He said that Mrs Walker did not pay any rent following the previous Tribunal's decision dated 20th February 2020, under Ref FTS/HPC/CV/19/2405, when a payment order was made in his favour, in respect of 18 months arrears of rent in the sum of £8100.00. Mr Gemmell stated that he had instructed Sheriff Officers to enforce the previous Tribunal's order of 20th February 2020. He said that the Officers had served a Charge for Payment on Mrs Walker personally at 49 Cairnlea Gardens, Bellshill on 24th June 2020. A copy of the Officers' Certificate of Execution of Charge had been lodged with the Tribunal by Mr Gemmell. Mr Gemmell also said that he had previously served a Notice to Quit the Property, by 30th June 2020, on Mrs Walker.

9. After hearing evidence and submissions from the parties the Tribunal asked Mrs Walker to clarify the months that she paid rent for, in the lump sum of £5850.00, in August 2016. The Tribunal calculated that 13 months' rent was due from July 2015 until July 2016. The Tribunal observed that 14 months' rent was due in August 2016 and, if a further payment had been made by Mrs Walker at the end of August, as she had said, this would have brought the rent up to date to August 2016 but with no additional deposit payment having been made. Mrs Walker then became upset, stated that she had had enough of all of the proceedings between the parties and left the Hearing.
10. The Tribunal waited 10 minutes. Mrs Walker did not re-join the call. The Tribunal's Clerk then called Mrs Walker who told him that she no longer wished to take part in these proceedings.

Findings in Fact and Law

11. The tenancy agreement of the parties started on 1st July 2016 and ended by 30th June 2020.
12. Mrs Walker paid the sum of £5850.00 to Mr Gemmell on 5th August 2016, for rent due for 13 months for the period July 2015 to July 2016. She did not pay a deposit.
13. There are arrears of rent owing by Mrs Walker to Mr Gemmell, for the months March, April, May and June 2020, in the total sum of £1,800.00.
14. Mr Gemmell is not in breach of the The Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") as he was not paid a deposit by Mrs Walker. He has no legal obligation to repay a deposit which was not made.
15. Mrs Walker is in breach of the parties' tenancy agreement as she failed to pay rent to Mr Gemmell for the months March, April, May and June 2020,

when the tenancy ended, in the aggregate sum of £1800.00. Mr Gemmell is legally entitled to be paid rent for the duration of the parties' tenancy agreement and is entitled to a payment order in the sum of £1800.00.

Reasons for Decision

16. Regulation 3 of the 2011 Regulations provides as follows:

“(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—

- (a) pay the deposit to the scheme administrator of an approved scheme; and
- (b) provide the tenant with the information required under Regulation 42.”

17. Having considered all of the oral and documentary evidence and submissions the Tribunal found that Mr Gemmell did not receive a deposit from Mrs Walker. The Tribunal found, on a balance of probabilities, that Mrs Walker's payment of £5850.00 on 5th August 2016, was for 13 consecutive months' rent due from July 2015 to July 2016. The Tribunal rejected Mrs Walker's oral evidence that she had included a deposit amount in the said payment of £5850.00 as it was inconsistent with her oral evidence that she brought her rent up to date with that payment. The Tribunal found that the payment settled the rent due to July 2016. Accordingly the Tribunal found that no deposit was paid and therefore no deposit required to be protected.

18. Section 16 of the Housing (Scotland) Act 2014 provides as follows:

“16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3) Part 1 of schedule 1 makes minor and consequential amendments.”

19. Therefore, the Tribunal now has jurisdiction in relation to claims by landlords, such as Mr Gemmell, against tenants, such as Mrs Walker, for payment under a tenancy agreement, such as the parties' tenancy agreement.

20. Having considered all of the oral and documentary evidence and submissions the Tribunal found, on a balance of probabilities, that Mrs Walker did not pay any rent to Mr Gemmell in the months March, April, May and June 2020. Mrs Walker had not contradicted Mr Gemmell's evidence and submission that

rent for those months was due, in the total sum of £1800.00. The Tribunal also found that the parties' tenancy agreement had ended by June 2020 and rejected Mr Gemmell's oral evidence that the tenancy came to an end in November 2020. Mr Gemmell's claim in this regard was inconsistent with the terms of his Application, his own evidence regarding the Notice to Quit served on Mrs Walker and also with the report of the Sheriff Officers, which he had lodged, confirming Mrs Walker's different address in June 2020. Accordingly the Tribunal found that Mr Gemmell is entitled to a payment order in the sum of £1800.00 for unpaid rent from March to June 2020.

21. The Tribunal accordingly determined to refuse Mrs Walker's Applications and further determined that Mr Gemmell is entitled to payment of £1,800.00, in respect of rent arrears arising from Mrs Walker's breach of the parties' tenancy agreement.

22. Therefore the Tribunal determined to make an order for payment by Mrs Walker to Mr Gemmell of the sum of £1,800.00.

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.

G McWilliams

4th May 2021

Legal Member

Date