



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/CV/19/3648

Re: Property at 23 Carseview Gardens, Dundee, DD2 1NE (“the Property”)

Parties:

Ms Carol McCallum, 93 Tweed Crescent, Dundee, DD2 4DJ (“the Applicant”)

**Ms Tara Arshad, UNKNOWN, UNKNOWN and
Lara Lettings, Bank House, 1 Stirling Street, Dundee DD3 6PJ (“the
Respondents”)**

Tribunal Members:

**Gabrielle Miller (Legal Member)
Ahsan Khan (Ordinary Member)**

**Decision (in absence of the Applicant and the Respondents)
The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the application should be dismissed.**

Background

1. This is an application in terms of Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). The Applicant is seeking an order for payment of the sum of £650 in terms of s16 of the Housing (Scotland) Act 2014.
2. A Case Management Discussion (“CMD”) was set for 7th April 2020 but was postponed due to Covid 19 reasons. The hearing was then set for 29th July 2020 by teleconference to allow for restrictions in place due to Covid 19.
3. A CMD was held on 29th July 2020 at 10am by teleconference. The Applicant was represented by Ms Rebecca Menzies, solicitor, Dundee North Law Centre. The Applicant was also present. The Respondent was not present. The Tribunal

proceeded in terms of Rule 29 of the Rules. The Respondent had been served by advertisement. The Tribunal received photos of the receipts for the deposit on the day of the Tribunal. Ms Menzies informed the Tribunal that the Applicant was not pursuing the issue of the tenancy deposit not being put into a deposit scheme as it has been more than 3 months since the Applicant left the Property. The object of this case was for the return of the deposit in full only. Ms Menzies noted that the tenancy ran from 2012 to November 2017.

4. Ms Menzies noted that the deposit was paid in two lots of £550 and £100. Lara Lettings is the letting agency acting on behalf of the Respondent. The tenancy agreement states that there is a zero deposit. However, Lara Lettings had told the Applicant directly to pay £650 as a deposit as they had previously had a bad experience with tenants doing a “moonlight flit”. The deposit was paid into Lara Lettings bank account. It is unknown if this was then transferred to the Respondent or remains with Lara Lettings. Given this the Tribunal was of the view that Lara Lettings is a party to the case. Ms Menzies motioned to amend the case to include Lara Lettings as a party. This was allowed by the Tribunal.
5. The Applicant confirmed to the Tribunal that her husband, Mr David McCallum, was happy for her to proceed with the case without his involvement. He had been a witness to Lara Lettings stating that they needed the deposit. Ms Menzies will get a signed statement from Mr McCallum to confirm that he is content for the Applicant to be a party to the action only.
6. The Tribunal noted that the issues were:-
 - a) Whether the payment for £650 was paid as a deposit albeit that the tenancy agreement states zero deposit;
 - b) Whether the Applicant is due the return of the deposit of £650;
 - c) Whether Lara Lettings had given the deposit to the landlord or held the deposit; and
 - d) If the deposit is due to be returned to the Applicant then whether this is due from Lara Lettings or the landlord.
7. The CMD was continued to a full hearing and the parties amended.
8. The Applicant lodged a statement from her husband confirming her position and giving his consent to her solely pursuing the claim.

Hearing

9. A full hearing was held on 22nd September 2020 by teleconference. Neither the Applicant nor the Respondents attended the hearing. The Applicant's representative did not attend either. The Tribunal waited until 10.20 but there was nothing further from any party. The Tribunal was not satisfied that the amount claimed was still outstanding or if matters had been settled by parties since the last communications sent to the Housing and Property Chamber.

Findings in Fact

10. Neither the Applicants nor the Respondents attended the teleconference hearing.
11. The Tribunal was satisfied that all parties had been appropriately served with notice of the Tribunal hearing.

Decision

12. In the absence of the parties the Tribunal felt that it could not deal with the proceedings justly and fairly and so dismissed the application under rule 27(2)(b) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

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 Miller

22nd September 2020

Legal Member/Chair

Date