



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 88 of the Rent (Scotland) Act
1984**

Chamber Ref: FTS/HPC/PR/18/1008

Re: Property at 86 Hilton Heights, Aberdeen, AB24 4QF (“the Property”)

Parties:

**Miss Tanisha Gatson, 14 Kincardine Court, Stonehaven, Aberdeenshire, AB39
2FS (“the Applicant”)**

**Miss Emma Sheldon, Flat 13, 15 East Pilton Farm Crescent, Edinburgh, EH5
2GG (“the Respondent”)**

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined to make an order for payment in the sum of £400 against
the Respondent.**

Background

- 1** By application dated 25 April 2018 the Applicant submitted an application to the Tribunal under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017. The application sought payment against the Respondent in the sum of £400 as a result of the Respondent's failure to pay the tenancy deposit into an approved scheme.
- 2** By Notice of Acceptance dated 3rd May 2018 the Legal Member of the First-tier Tribunal with delegated powers of the Chamber President considered there were no grounds for rejection of the application. A Case Management Discussion was therefore scheduled for 18th July 2018. Following an unsuccessful attempt to serve notice of the application upon the Respondent the Case Management Discussion was postponed to the 9th January 2019.

- 3 On 11th December 2018 a copy of the application together with notification of the Case Management Discussion was served upon the Respondent by Sheriff Officers.

The Case Management Discussion

- 4 The Case Management Discussion took place on 9th January 2019. The Applicant was present. The Respondent was not present, nor represented.
- 5 As a preliminary point, the Tribunal noted that the application had proceeded under Rule 103. However having considered the paperwork the Tribunal took the view that it should in fact proceed under Rule 87 as it appeared to seek recovery of an unlawful premium. The Applicant confirmed that this was the case and she would therefore seek to amend the application to reflect that. The Tribunal agreed to allow the amendment. It considered there would be no prejudice to the Respondent in doing so, as the application paperwork clearly set out the basis upon which payment was sought.
- 6 The Applicant set out the background to the dispute as detailed in the application paperwork. She confirmed that the payment of £400 had been made to secure the tenancy with a view to it being applied to the deposit thereafter. She further advised that she had not had any recent correspondence with the Respondent. She has spoken with her on the phone twice, the last of which was on 17th August 2017. The Respondent had stated that the sum was in a deposit scheme however the Applicant had been given no evidence of this. The Applicant sought recovery of the sum paid.

Findings in Fact

- 7 On or around June 2017 the Applicant and Respondent entered into discussions with a view to the Applicant taking up the tenancy at 86 Hilton Heights, Aberdeen.
- 8 On 3 July 2017 the Applicant paid the sum of £400 as an initial deposit to secure the tenancy. By mobile phone message dated 4 July 2017 the Respondent acknowledged payment.
- 9 On 10 July 2017 the Applicant advised the Respondent by mobile phone message that she was unable to take up the tenancy. The Applicant sought return of the sum of £400.
- 10 The payment of £400 was made to secure the grant of tenancy. It was therefore an unlawful premium under section 82 of the Rent (Scotland) Act 1984. The Applicant is entitled to recover the sum paid under section 88 of the said Act.
- 11 Despite repeated requests the Respondent has refused or delayed to return the sum of £400 which is lawfully due to the Applicant.

Reasons for Decision

- 12 Having considered the verbal and written representations from the Applicant the Tribunal was satisfied at the Case Management Discussion that it was able to make sufficient findings to determine the case without a hearing and that to do so would not be prejudicial to the interests of the parties. The Tribunal was satisfied that the Respondent had received proper notification by virtue of service of the papers by Sheriff Officers. She had not sought to dispute the terms of the application and had not taken the opportunity to attend the Case Management Discussion. It was clear from the communications produced by the Applicant that she was entirely unwilling to enter into any correspondence regarding the subject.
- 13 The Tribunal accepted based on its findings in fact that the payment of £400 was an unlawful premium and the Applicant was therefore entitled to seek recovery of same under section 88 of the Rent (Scotland) Act 1984. The Tribunal therefore determined to make an order for payment against the Respondent in the sum of £400.

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.

Ruth O'Hare

 Legal Member/Chair

Date

9/1/19