

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) in an Application under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Reference: FTS/HPC/PR/19/2004

Property at 19 Kelvin Drive, Airdrie, ML6 6HT ("the Property")

Parties

Mr Darren Murdoch, 51 Thrashbush Road, Airdrie ML6 6QT ("the Applicant")

Mr Paul McManus, 5 Thistle Quadrant, Airdrie, ML6 6HA ("the Respondent")

Tribunal Members

Mr James Bauld, Legal Member

Mrs Mary Lyden, Ordinary Member

Decision

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determines that no award should be made to the Applicant in terms of the relevant regulation of the Tenancy Deposit Schemes (Scotland) Regulations 2011. The Tribunal determines that no deposit was paid in respect of this tenancy.

Background

2. This application was lodged with the Tribunal on 28 June 2019. In it the Applicant seeks an order for payment of three times the deposit in terms of regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations").
3. After sundry procedure the Tribunal fixed a case management discussion to take place on 23 September 2019.
4. At that case management discussion it was clear to the Legal Member then presiding that there were clear factual disputes between the parties which could only be resolved by fixing a full hearing. The Legal Member then presiding accordingly determined that the matter should proceed to a hearing before a full Tribunal and the date of that hearing was thereafter intimated to the parties. That full hearing took place on 23 October 2019 at the Glasgow Tribunals Centre.

The Hearing

5. Both parties attended the hearing. Neither were represented by legal or lay representatives. The Applicant was accompanied by his wife Mrs Donna Murdoch.
6. In advance of the hearing, the Applicant had lodged with the Tribunal photocopies of pages from bank statements. One copy bank statement bore to be from an account numbered 42951340 and showed that on each of 16 February 2018 and 17 February 2018 a cash withdrawal had been made from that account of £250. The applicant indicated this account was an account held by his wife.
7. The other photocopies related to extracts from a bank account under number 60212236 in the name of the applicant. Darren Murdoch. These bank statements showed that on each of 27 March, 27 April and 29 May, all 2018, a sum of £450 was transferred by standing order for the credit of "Mrs Helen McManus".
8. At the commencement of the hearing the Tribunal asked parties whether they agreed that the bank statements could be treated as showing what was evident. In other words, that the Applicant, had withdrawn £250 on each of two days in February 2018 and that the Applicant had made payments on three consecutive months of £450 to Mrs Helen McManus.
9. Parties agreed that they were happy that the Tribunal could accept that these withdrawals and payments had been made. The Respondent, Mr Paul McManus, indicated that Mrs Helen McManus was his mother.
10. Parties were then asked to set out their positions. The Respondent Mr McManus indicated that rent payments had been made into his mother's account because she paid the mortgage on the property for him and he presumed that his mother had given those bank details to the Applicant. The Respondent's position was that he had advertised the property for rent on Gumtree and that on 15 February 2018 he had met the Applicant and his wife at the property. The Respondent's position was that his mother Helen McManus was also present at that meeting. The Respondent's position was on the date of 15 February no payments were made and he gave the keys to the Applicant and the Applicant's wife. The agreement was that rent would be £450 per month. No deposit was taken on the day and the Respondent's position was that it was agreed that a deposit of £450 would be paid by the Applicant making an additional payment of £100 along with the first few of the monthly rental payments. On being questioned why he would have handed keys to a property to a couple he had never met and without receiving any payment the Respondent indicated that Mr Murdoch and his wife had given him a "sob story", that they needed to move quickly and that their current landlord was asking them to remove. He indicated the flat had been empty for a period of 6-7 weeks and accordingly he simply wanted to get somebody into the property. He indicated the first payment

of rent was received on 27 March 2018 by means of a standing order paid into his mother's account. On being questioned by the Tribunal on whether this had been a happy experience for him he indicated he had learned a lesson and would never do this again.

11. The Respondent had noted that the Applicant's position was that they had paid a deposit of £450 in cash to Thomas McManus, the Respondent's father by attending at the Respondent's parent's house on 17 February. The Respondent had produced an email from his father in which his father indicated that he had never had any involved with the applicant, referred to in the email as the "complainant".
12. The Tribunal asked both parties whether they were happy to accept that the contents of the email would represent the evidence which would have been given by Mr Thomas McManus had he attended. Mr Thomas McManus was unable to attend owing to work commitments. Parties agreed that even if Mr Thomas McManus was present and was placed on oath he would simply repeat what was in his letter and accordingly the Tribunal were entitled to take that letter into account.
13. The Applicant then addressed the Tribunal. He disputed the Respondent's version of events. He agreed that he had seen the property advertised on Gumtree and had made arrangements to view it. He says he attended at the property on 15 February 2018 and had met only Mrs Helen McManus there. Arrangements were then made for him to travel to the McManus family home where a tenancy agreement was signed in the car park outside the house. The Respondent had been in his car but got out of the car to sign the tenancy agreement. The Applicant indicated the position was that he should thereafter re-attend at the home of Mr and Mrs McManus to make a payment of £450 in cash on 17 February and thereafter he would be given the keys.
14. In giving his version of events, the Applicant indicated that he thereafter attended on 17 February and on two occasions indicated that he had gone to that house to make payment of the first months "rent". He quickly corrected himself to then say "deposit". The Applicant's position was he had attended at the home of Mr and Mrs McManus on 17 February and had knocked on the door. The door had been answered by Mr McManus Senior. He had indicated that Mrs McManus was not home but was clearly aware of the reason for the Applicant's visit. Mr Thomas McManus accordingly then went back into the house, returned to the front door with a set of keys and gave the keys to Mr Murdoch in exchange for £450 cash.
15. The Applicant explained that the bank account from which the £500 cash had been withdrawn in February was an account in the name of his wife Donna Murdoch. His position was that the money had been withdrawn in order to make that cash payment in respect of the moneys owed to Mr McManus. He confirmed he did not ask for a receipt for the payment. Mr Murdoch then

indicated that the first months' rent was paid on 28 February 2018 when Mrs Helen McManus called at the property at 19 Kelvin Drive to collect further moneys.

16. The Applicant was then questioned about whether the fact he had taken £500 out in cash demonstrated that could only be used to pay for the deposit. In an email which had been sent to the Tribunal prior to the hearing, the Respondent had indicated his view that the withdrawal of cash could be for any purpose at all. The fact that the Applicant had withdrawn money on 16 and 17 February did not prove that such money had been thereafter used to pay a deposit. The Respondent's position was that that cash could be used for any purpose including purchasing a television, clothes or shopping. The Applicant denied that and indicated the money had been withdrawn to make the payment of £450. The Applicant indicated that he was not someone who regularly withdrew large sums of cash from a bank account. The Applicant was then questioned with regard to other entries in the bank statements which he had lodged. These indicated that on 29 May 2018 he withdrew the sum of £350 cash on one day and that on 29 March 2018 he had withdrawn £200 in cash. He was asked whether these also represented large cash amounts being withdrawn and whether the Tribunal should draw any inference from that. He could not recall why these sums had been withdrawn but his position remained that the sums withdrawn in February 2018 had been to pay the deposit. He could not explain why a deposit would be paid without a first month's rent also being paid.
17. The Respondent was then asked why he had taken no attempts to ensure that the alleged deposit of £450 was paid in instalments along with the rent. His position was that he was getting the rent every month and really didn't want to worry about a deposit. He was simply happy to have the property rented and getting the monthly rent. Accordingly he took no steps to try to pursue the Applicant in respect of the agreed deposit.
18. The parties were then asked if they wished to add anything further to their submissions and both indicated they did not wish to do so. The Tribunal thereafter thanked the parties for attending and indicated the Tribunal would consider matters and issue its decision.

Findings in Fact

19. The Applicant and Respondent were respectively the tenant and landlord under a tenancy agreement in respect of the property at 19 Kelvin Drive. The tenancy commenced on or around 17 February 2018 and the monthly rent was £450. The tenancy was a relevant tenancy for the purposes of the 2011 Regulations.
20. The Applicant made a payment of £450 in cash on 17 February 2018 to the father of the Respondent.

21. This payment was a payment in respect of the first month's rent for the property and was not a deposit in terms of the 2011 Regulations.

Reasons for Decision

22. This application was raised alleging that a tenancy deposit had been paid by the Applicant to the Respondent's father. The question to be determined by the Tribunal was whether a payment had been made and if so whether that payment was a deposit.
23. The Respondent's position was that no payment had been made and he produced an email from his father also claiming that no payment had been received.
24. The Tribunal required to consider the evidence they heard from both parties. Both parties had attended the Tribunal and their positions were diametrically opposed.
25. The Tribunal noted that in giving evidence, the Applicant on two occasions made reference to the payment of £450 as being the first month's "rent". Although he quickly corrected himself, the Tribunal thought that was a notable matter. The Tribunal noted that the Respondent denied that the Applicant had made any payment on or around 17 February. The Tribunal also noted that the Respondent had produced an email from his father in which a similar denial was made.
26. The Tribunal in considering the entirety of the evidence takes the view that the Respondent, for reasons best known to himself, believed that denying a payment had been received was the only way to persuade the Tribunal that no deposit had been taken. The Tribunal does not accept the Respondent's evidence that no payment was made on 17 February. The Tribunal also rejects the email received from the Applicant's father. The Tribunal accepts the Applicant's evidence, supported by his wife that they attended at the Respondent's parents' home on 17 February. The Tribunal accepts that a payment of £450 was paid in cash by the Applicant to the Respondent's father. However, the Tribunal takes the view, on the balance of probabilities, that the payment made on that date was a payment in respect of the first month's rent in advance for the property in exchange for which the keys to the property were given to the Applicant. The Tribunal does not accept that the payment represented a deposit in respect of this tenancy. The Tribunal takes the view that the more likely reason for that initial payment was as the first monthly rental payment in respect of the tenancy and that it was only on payment of that money that keys were released to the applicant. The tribunal believes it to be unlikely that any landlord would hand over keys to a property at a first viewing of property with a couple who were unknown to him without receiving any payment or without carrying out any checks into their identity. The tribunal takes the view that the more likely explanation for subsequent events is that arrangements were made for the keys to be released on payment of the first month's

rent and that such payment was made in cash on 17 February. The tribunal accordingly accepts some of the evidence led from each party but not the entirety of either's evidence.

27. Accordingly as the Tribunal have determined that no deposit was paid then the relevant provisions of the 2011 Regulations do not come into play. If there is no deposit, then there is no requirement on the Respondent to make any payment to a tenancy deposit scheme. Accordingly there is no award that can be made by the Tribunal and accordingly the Tribunal must dismiss the application.

Decision

28. The Tribunal accordingly dismisses the application and makes no further order.

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.

James Bauld

Signed
James Bauld, Legal Member

Date 1 November 2019