

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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**Statement of Decision: Housing (Scotland) Act 2006**

**Chamber Ref:** FTS/HPC/PR/19/3025

**Property Address:** 72 Calder Road, Bellsquarry, Livingston EH54 9AD  
("the property")

**The Parties:** Mrs Sylwia Ewa Szindler, 59a Main Street, Holytown  
ML1 4<sup>TH</sup> ("the applicant")

Mr John Alexander, 8 Cedarbank, Livingston EH54  
6DR ("the respondent")

### **Tribunal Members:**

<b>Mark Thorley</b>	<b>Legal Member</b>
<b>Eileen Shand</b>	<b>Ordinary Member</b>

### **Background**

1. The applicant applied to the First-tier Tribunal on 14 August 2019. She was assisted by Mr Melvin of the Citizens Advice Bureau to whom a mandate had been signed. The applicant applied under Rule 103. She set out that she was a former tenant of the respondent from 12 June 2018 until on or about 9 July 2019. She set out that she had paid a deposit in relation to the property but that the deposit had not been paid into an approved scheme.
2. The application was accompanied by a copy of the Private Rented Tenancy Agreement, messenger correspondence re the notice and deposit, written proof the deposit was not protected and the Landlord Registration search results.
3. The application was accepted on 14 October 2019 and a case management discussion set down for 29 November 2019. The respondent made written representations and lodged documentation in support of that application.
4. A Notice of Direction was issued on 29 November 2019 following upon the case management discussion.

## Hearing

1. At the hearing both parties attended. The applicant attended along with Mr Melvin her representative from the Citizens Advice Bureau and a Polish interpreter.
2. The respondent attended as well.
3. Evidence was led by both the applicant and the respondent and the respondent's wife Mrs Vivian Alexander.

## Findings in Fact

1. The applicant negotiated the terms of a tenancy for the property at 72 Calder Road, Bellsquarry, Livingston whilst she was in Poland.
2. That a Private Residential Tenancy Agreement was entered into between the parties on 12 June 2018.
3. That the terms of the Agreement was that rent was due to be paid at the rate of £670 per month payable in advance. That a deposit of £670 was to be paid at the start date of the tenancy or before.
4. That in advance of coming to Scotland the applicant had attempted to send by Western Union transfer a payment of 3,300 Zloty's which amounted to approximately £664.65 GBP. That payment had not been received by the respondent as it was made payable to the respondent's wife who did not have an account in her married name.
5. After having arrived at the tenancy address on 12 June 2018 on the following day the applicant and the respondent attended at a Western Union agent's office and cash was obtained from the transfer that had previously been attempted and was paid to the respondent.
6. The sum paid to the respondent was a deposit.
7. Thereafter the parties agreed on 12 June 2018 that payments of rent would be made weekly.
8. That at the end of the tenancy the respondent wrote out a handwritten document making reference to the sum of money received by himself at the outset of the tenancy as being a deposit of 3,300 Zloty's.
9. The respondent thereafter deducted certain sums from the deposit and repaid to the applicant the sum of £350.
10. That the deposit was not protected in an approved scheme during the currency of the tenancy.

## Reasons for decision

1. The Tribunal had carefully considered the written documentation provided by parties in advance of the hearing.
2. It was accepted by both the applicant through her representative and the respondent that the issue came down to whether the payment made by the applicant at the outset of the tenancy was a deposit as set out by the applicant or a payment of advance rental as described by the respondent.
3. The applicant through her interpreter gave evidence. She is Polish. She came to Scotland for work. She had never spoken to the respondent in advance of arriving in Scotland. The negotiation of the lease was undertaken by a friend of the respondent's wife. The rent was due to be £700 per month but due to the relationship between the mutual friend and the respondent and also the applicant this was discounted to the sum of £670. The applicant's English is limited. She was clear however that she was requested to make a payment of £670 as a deposit. She did so through a Western Union transfer which was made payable to the respondent's wife. It unfortunately became clear that the respondent's wife had a bank account which was not in her married name and as such the payment could not be made into that account. A payment of 3,300 Zlotys was made which was effectively the equivalent of £670.
4. The applicant confirmed that she had not signed any lease before arriving in Scotland. When she did so she went to the property and met the respondent. At that time she signed a lease. She agreed that the rent would be paid on a weekly basis. She was expecting to pay rent after a full week of work. She herself could not read the agreement. She cannot read English.
5. She went along with the respondent to cash in the Western Union transfer and it was cashed and the money after the commission was taken was paid to the respondent. As far as she was concerned she never agreed that the deposit was a rental payment in advance.
6. At the end of the tenancy the respondent attended and produced a written note for her of the final sums. The written note produced (which was a production) makes reference to "deposit 3,300 Pol exchange rate 4.925" - £670. She eventually received back the sum of £350.
7. She was clear in her evidence that what she had paid for at the outset of the tenancy was a deposit and was not a rental payment in advance.
8. The respondent accepted that negotiations of the lease were undertaken by his wife's friend Agnes Burns in Scotland and the applicant whilst in Poland. Her son Kamil In papers name is spelt Kamil was a crucial part of these discussions. As far as he was concerned the deposit was due to be £670 and there was a rent to pay of £670. He thought the lease should last for a period of three years. The respondent had made renovations to the property in order to make it suitable for renting. He wanted to recoup some of those costs. The respondent needed the money.

9. The respondent accepted that the Western Union transfer had been made prior to the applicant arriving in Scotland but his wife's bank account was not in the name of Alexander but in her maiden name and accordingly it could not be cashed.
10. He said that on arrival and in the property he was content to get the £670 deposit the next day but then when he asked for rent in advance the respondent said she didn't have any money. He explained there had been work done to the house and that there had been a large cash outlay. He said that she could pay weekly in arrears for the rent but that the deposit would be used as a rental payment in advance. He said that much of the discussion took place with the applicant's son Kamil who was there. This was all agreed and thereafter she began to pay rent at the sum of £155 per week. Everything ran smoothly until the end of the tenancy.
11. He said that he did revise a Private Residential Tenancy Agreement and that was put through the door of the tenancy and although he had signed it and changed pages 7 and 8 he understood the respondent had not. He could not find a copy of it.
12. It was put to him in cross-examination that he had handwritten a note that made reference (at the end of the tenancy) to the word "deposit". He said this was "just a terminology".
13. Mrs Alexander gave evidence. She acknowledged that there was a discussion about changing the terms of the agreement. Her husband explained that weekly payments of rent could be taken. This is because she might be clearer to say the Applicant didn't have any money. Accordingly it was changed from monthly to weekly.

### **Submissions**

1. Mr Melvin on behalf of the applicant set out that this was a deposit that had been paid. There would have had to be some form of express agreement to change the "deposit" into rental agreement in advance. He understood that the respondent may have wished to have used the money but that did not make it rental payment in advance.
2. The respondent replied by saying that he was a first time landlord and was somewhat naïve. He said however there was an agreement between himself and the respondent that the money that had been paid was to be rental payment in advance. He was just using the term "deposit" in the final document.

### **Reasons for decision**

1. The applicant is primarily a non-English speaker. She negotiated a lease through effectively a third party. She was very clear that what she was being asked to pay was the sum of £670 as a deposit. She didn't have any more money than that. She made an attempt at a Western Union transfer in advance of

coming to Scotland. She didn't sign a tenancy agreement in Poland. The Western Union transfer did not take place but that was through no fault of hers. She in her evidence was clear that what she was paying for was a deposit. She expected thereafter to pay rent and wanted to do so weekly. She was credible in her evidence.

2. The respondent's evidence was not significantly different on the point of what happened up until arrival in the property. The only difference as he said at that point in time that it was then agreed that the deposit was in fact going to be changed to a rental payment in advance.
3. What was clear was that he wanted to use the money. He had expenses to pay. Clearly therefore if this were a deposit that required to be lodged as a deposit then the respondent would not have been able to utilise those funds to meet expenses. Accordingly it was in the respondent's interest to refer to these as rental payment in advance.
4. Of course if it was a rental payment in advance then there would have been no basis upon which the respondent could have retained at the end of the tenancy any monies beyond which was due in terms of rent. There would have been no protection. He would have had to return all the other monies and not retain anything in relation to damage because of course this would have been rental payments in advance.
5. He accepted entirely that the applicant was a Polish speaker and the negotiations were conducted by her son. He also accepted that there was a Private Residential Tenancy Agreement which was signed by her. He said that he then put through her letterbox a revised Agreement particularly in relation to pages 7 and 8 of the Agreement but he accepted again that he had never got a principal signed by her back.
6. He also accepted that the document that he hand wrote at the end of the tenancy made reference to the word "deposit".
7. All these pieces of evidence pointed to the monies being a "deposit". The Tribunal accepted the evidence of the applicant on this point together with the other pieces of evidence. The handwritten document was an important document in this.
8. Accordingly in relation to the primary issue as to the nature of what the applicant paid at the outset the Tribunal accepted that this was a deposit and accordingly should have been placed in a scheme and protected.

## **Decision**

The Tribunal thereafter required to consider the penalty that be paid. It was accepted that in terms of the Private Residential Tenancy Agreement that was signed by the parties that the tenant would have been obliged to have paid rental income in advance which clearly did not happen. It is also accepted that the respondent had attempted to assist the applicant as much as possible on her arrival in Scotland and had clearly spent

monies on putting the property into a condition to rent. He was effectively a first time "landlord".

However the dispute regarding what was to be returned at the end of the tenancy could not be conducted through the deposit scheme and this prejudiced the applicant.

Having regard to all the factors the Tribunal determined that a figure of one month's rental was to be the penalty and awarded the applicant the sum of £670.

### **Right of Appeal**

**A landlord, tenant or third party applicant 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.**

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Mark Thorley

Signed

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Legal Member

Date

26 July 2020