



**Decision on Landlord's Application for permission to appeal a decision of the First-tier Tribunal under Rule 37 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('the Rules')**

**Chamber Ref: FTS/HPC/PR/18/3230**

**Re: Property at 18 Woodlands Place, Kilmarnock, KA3 1UA**

**('the Property')**

**Original Parties:**

**Mr Stuart McLintock, 34 Bruce Street, Kilmarnock, KA1 4LS**

**('the Applicant')**

**Mr John Bordone, 1 Innellan Drive, Kilmarnock, KA3 1SS**

**('the Respondent')**

**DECISION:**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') REFUSES the application for permission to appeal in terms of Rule 38 of the Rules.**

**The tribunal consisted of Joseph C Hughes, Legal Member.**

1. The Landlord lodged an application for permission to appeal a decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) to the Upper Tribunal dated 23<sup>rd</sup> January 2019. I have treated the letter from the Landlord as an appeal rather than a review. The Landlord uses the word 'review' in his opening sentence. When taken as a whole I am satisfied that the Landlord's letter is seeking *permission to appeal* as he clearly states in the final sentence of his letter. The Landlord must identify the alleged point or points of law on which he wishes to appeal.

2. The original hearing was a Case Management Discussion in respect of The Tenancy Deposit Schemes (Scotland) Regulations 2011 ('the Regulations'). The property involved was 18 Woodlands Place, Kilmarnock KA3 1UA. The Legal Member sat alone. The tribunal granted an Order against the Landlord to pay the sum of £960 Sterling to the tenant in terms of Regulation 10(a) of the Regulations and to pay the sum of £115 Sterling to an approved scheme in terms of Regulation 10(b) of the Regulations.
3. The Landlord accepted that he was aware of the Tenancy Deposit Scheme provisions at the outset of this tenancy. The original tenancy deposit was £475 Sterling. The Landlord stated that the tenancy deposit was apparently paid to the letting agent who then paid the tenancy deposit directly back to the Landlord's bank account. The Landlord stated that he was unaware the tenancy deposit had been repaid to him. He stated there was a genuine misunderstanding between the letting agent and the Landlord. No evidence was lodged from the letting agent to support the said misunderstanding.
4. It was accepted by the Landlord that the tenancy deposit was *unprotected* from 1<sup>st</sup> June 2016 until 25<sup>th</sup> October 2018 - a significant period of almost 29 months.
5. On 25<sup>th</sup> October 2018 the Landlord paid £360 Sterling to the tenant as part payment of the original tenancy deposit. The Landlord unilaterally deducted the sum of £115 Sterling from the original tenancy deposit without the agreement of the tenant.
6. The original tenancy deposit was therefore never placed into an approved scheme. I took into consideration the Landlord's explanation about the apparent misunderstanding about who was attending to the tenancy deposit. He blamed the letting agent. This is fully recorded within my decision [see Background and Findings of Fact].
7. I had regard to everything presented to me which was relevant to the tenancy deposit. The Applicant was accompanied by his sister as a supporter. Although the Landlord's sister was in attendance as a supporter I allowed her to contribute. Both the Landlord and his sister were very vocal throughout the hearing. They both attempted, on a number of occasions, to lead evidence

about irrelevant issues. I explained to both of them that the tribunal would restrict its consideration to evidence about the tenancy deposit. In particular I rejected any attempt, by either of them, to present evidence about alleged dilapidations. I gave careful consideration to the Applicant's explanation about the apparent misunderstanding he had with the letting agent.

8. I do not consider my decision to be '*harsh and excessive*'. I explain within my decision that the Landlord's failure to protect the tenant's tenancy deposit from 1<sup>st</sup> June 2016 until 25<sup>th</sup> October 2018 was, in itself, a significant breach of the Regulations. Even when the Landlord discovered the problem with the tenancy deposit he made no attempt to lodge the tenancy deposit with an approved scheme as he was legally obliged to do in the first place. This breach was further aggravated by the Landlord unilaterally deducting money from the original tenancy deposit. No error of law is identified.
9. I note in the Appeal letter the Landlord stated in the third paragraph '*I returned the deposit to the tenant*'. This is obviously not accurate. A **partial** repayment of the original tenancy deposit was paid to the tenant by cheque. Whether the tenant cashed this cheque '*without neither query nor dispute*' is immaterial and irrelevant. The Landlord further stated that the tenant left the property on 1<sup>st</sup> September 2018. The partial repayment to the tenant was not paid until 25<sup>th</sup> October 2018. As stated at Finding of Fact 14, the tenant was effectively deprived of his legal right to access an approved scheme's Dispute Resolution mechanism in terms of Part 6 of the 2011 Regulations. The tenant stated that he had to borrow money from his parents to help pay the deposit for the property he subsequently rented after leaving the Landlord's property. The tenant stated he found the dispute over the tenancy deposit stressful. No error of law is identified.
10. The Landlord further stated that the tenant had '*already left and moved into another property before any appeal or claim for compensation had been lodged against me*'. This observation is immaterial and irrelevant. No error of law is identified.
11. In seeking permission to appeal to the Upper Tribunal, the Landlord must demonstrate that the tribunal has made a decision which is erroneous in law. The tribunal submits that the Landlord requires to demonstrate a good arguable case for an appeal but does not require to show that the appeal would be bound to be successful.

12. It is clear from the decision that the tribunal considered all the relevant evidence before it and made appropriate Findings of Fact. The law has been correctly applied to the Findings of Fact. The correct burden and standard of proof was applied. The reasons are intelligible, focused and adequate.

13. The Appeal is not arguable. No error of law having been identified, the First-tier Tribunal for Scotland refuses the application for permission to appeal to the Upper Tribunal.

**14. (A) Notification of Right to Make an Application :**

Parties have the right to make an application to the Upper Tribunal for permission to appeal the Tribunal's refusal to grant permission to appeal.

**(B) Time Limit:**

An Appeal by a person intending to appeal this refusal must provide a Notice of Appeal to the Upper Tribunal for Scotland within 30 days after the day of receipt by that person of the refusal of permission to appeal, all in terms of The Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016 [Rule 3].

**(C) Method:**

Any person intending to appeal this refusal of permission to appeal must lodge a Notice of Appeal (*Upper Tribunal Appeal and Request Form UTS-1*) with the Upper Tribunal of Scotland, The Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT [0141 302 5880]

J.C Hughes

Joseph C Hughes (Legal Member)

10<sup>th</sup> March 2019