



Statement of Decision under Rule 39 of the First-tier Tribunal Housing and Property Chamber Rules of Procedure 2017 and Section 44 of the Tribunals (Scotland) Act 2014

Chamber Ref: FTS/HPC/PR/21/2858

Re: Property at Flat 1, 25 Squire Street, Glasgow, G14 0RP (“the Property”)

Parties:

Mr Daniel McCann, Flat 1, 25 Squire Street, Glasgow, G14 0RP (“the Applicant”)

Mr Kris Kane, Unknown, Unknown (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”), having reviewed its decision of 9 February 2022, determined to take no action.

Background

1 The Applicant applied to the Tribunal under regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”) seeking an order for payment as a result of the Respondent’s failure to lodge their tenancy deposit with a tenancy deposit scheme. Following a Case Management Discussion on 7 February 2022 the Tribunal issued its decision in which it made an order against the Respondent in the sum of £250.

2 The Applicant sent an email to the Tribunal on 7 March 2022 requesting a review of the decision in the following terms:-

“It states fraudulent intention wasn’t a factor - if it was a factor there wpukd be grounds to review.”

You're telling me failing to make the deposit in 2 years isn't intentional? My Kane saying in writing he would only hand back the deposit if he sees fit isn't his intention to withhold the deposit?

Mr Kane stating in writing he wants me out on a certain day so he can paint and put down new carpets (which should have been replaced prior to me moving in) isn't an intention to now use that as a basis to withhold the deposit through the now holding this party.

Lying about having previous tenants with no landlord insurance isn't fraudulent intention? I dare say if you ask for proof my Kane was out of the country you would also see that this wasn't the case..

This isn't fraudulent intention either?

Please send this back down for review."

- 3 Rule 39(2)(b) of the Scottish Tribunals (Time Limits) Regulations 2016 provides that the application for review must be received within 14 days of the date the decision was sent to the parties. The decision in this case was sent to the parties on 10 February 2022. The application is therefore out with the period stated in Rule 39(2)(b). The Tribunal notes however that the Respondent had initially pursued an application for permission to appeal which was refused by the Tribunal. On that basis the Tribunal determined to extend the period for receiving the application for review under Rule 16A(a) of the Procedural Rules.

Relevant Legislation

- 4 The provisions regarding review of a Tribunal decision are contained with Rule 39 of the Procedural Rules:-

“39.—(1) The First-tier Tribunal may either at its own instance or at the request of a party review a decision made by it except in relation to applications listed in rule 37(3)(b) to (j), where it is necessary in the interests of justice to do so.

(2) An application for review under section 43(2)(b) of the Tribunals Act must—

(a) be made in writing and copied to the other parties;

(b) be made within 14 days of the date on which the decision is made or within 14 days of the date that the written reasons (if any) were sent to the parties; and

(c) set out why a review of the decision is necessary.

(3) If the First-tier Tribunal considers that the application is wholly without merit, the First-tier Tribunal must refuse the application and inform the parties of the reasons for refusal.

(4) Except where paragraph (3) applies, the First-tier Tribunal must notify the parties in writing—

(a) setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing; and

(b) may at the discretion of the First-tier Tribunal, set out the First-tier Tribunal's provisional views on the application.

(5) In accordance with rule 18, the decision may be reviewed without a hearing.

(6) Where practicable, the review must be undertaken by one or more of the members of the First-tier Tribunal who made the decision to which the review relates.

(7) Where the First-tier Tribunal proposes to review a decision at its own instance, it must inform the parties of the reasons why the decision is being reviewed and the decision will be reviewed in accordance with paragraph (4) (as if an application had been made and not refused).

(8) A review by the First-tier Tribunal in terms of paragraph (1) does not affect the time limit of 30 days in regulation 2(1) of the Scottish Tribunals (Time Limits) Regulations 2016 for making an application for permission to appeal.”

43 Review of decisions

(1) Each of the First-tier Tribunal and the Upper Tribunal may review a decision made by it in any matter in a case before it.

(2) A decision is reviewable—

(a) at the Tribunal's own instance, or

(b) at the request of a party in the case.

(3) But—

(a) there can be no review under this section of an excluded decision,

(b) Tribunal Rules may make provision—

(i) excluding other decisions from a review under this section,

(ii) otherwise restricting the availability of a review under this section (including by specifying grounds for a review).

(4) The exercise of discretion whether a decision should be reviewed under this section cannot give rise to a review under this section or to an appeal under section 46 or 48.

(5) A right of appeal under section 46 or 48 is not affected by the availability or otherwise of a review under this section.

44 Actions on review

(1) In a review by the First-tier Tribunal or the Upper Tribunal under section 43, the Tribunal may—

(a) take no action,

(b) set the decision aside, or

(c) correct a minor or accidental error contained in the decision.

(2) Where a decision is set aside by the First-tier Tribunal in a review, it may—

(a) re-decide the matter concerned,

(b) refer that matter to the Upper Tribunal, or

(c) make such other order as the First-tier Tribunal considers appropriate.

(3) If a decision set aside by the First-tier Tribunal in a review is referred to the Upper Tribunal, the Upper Tribunal—

(a) may re-decide the matter concerned or make such other order as it considers appropriate,

(b) in re-deciding that matter, may do anything that the First-tier Tribunal could do if re-deciding it.

(4) Where a decision is set aside by the Upper Tribunal in a review, it may—

(a) re-decide the matter concerned, or

(b) make such other order as it considers appropriate.

(5) In re-deciding a matter under this section, the First-tier or Upper Tribunal may reach such findings in fact as it considers appropriate.”

Reasons for Decision

- 7 The Tribunal considered it had sufficient information upon which to determine the request for review. Given the nature of the issues raised by the Respondent the Tribunal did not consider it required a hearing in order to take a decision on the application.
- 8 The decision taken by the Tribunal in respect of this application had been reached after hearing verbal submissions from both the Applicant and Respondent. The Applicant had been given the opportunity to respond to the submissions put forward by the Respondent. He had also submitted lengthy

written representations. The request for review appears to now be an attempt to reopen that process and re-adjudicate matters which have now been considered by the Tribunal.

- 9 With reference to the Tribunal's decision of 9 February 2022, the Tribunal accepted that the failure to lodge the deposit had been an oversight on the Respondent's part, and it was noted that the deposit had been lodged once the error was discovered. The Respondent had also outlined the history of the tenancy in his verbal submissions, and the Tribunal had accepted his account. There was no alternative put forward by the Applicant, albeit he appears to now suggest that what the Respondent put forward was false.
- 10 The Tribunal is required to establish relevant facts in order to determine an application, through weighing up the evidence before it. In tenancy deposit cases, there can often be issues raised that are immaterial to the decision the Tribunal is required to make. In this case, the Tribunal considered all of the relevant factors in this case in reaching its decision. There is nothing in the Applicant's request for review to persuade the Tribunal that it should alter said decision.
- 11 Having reviewed its decision, the Tribunal therefore determined to take no further action.

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.

R. O'Hare

28th March 2022

Legal Member/Chair

Date