



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies)(Scotland) Act 2016

Chamber Ref: FTS/HPC/PR/19/3804

Re: Property at 41 Morris Court, Perth, PH1 2SZ (“the Property”)

Parties:

Alexa Zsuzsanna Lukenics, Mr Donatas Markevicius, 62 East Moulin Road, Pitlochry, PH16 5ET; 3 Walker Court, Rie-achan Road, Pitlochry, PH16 5FJ (“the Applicant”)

Mr Murray Ritchie, 5 Walker Place, Aberdeen, AB11 8BQ (“the Respondent”)

Tribunal Members:

Rory Cowan (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a Payment Order in the Sum of £824 be made against the Respondent and in favour of the Applicant.

- Background

Although this application relates to a deposit, it has been framed as an application under Rule 111 (rather than Rule 103). The only order that is sought relates to an Order for Payment in the sum equivalent to the amount of the deposit paid. Various documents have been lodged in support of the application as well as written authority for Mr Markevicius to deal with matters on behalf of Ms Lukenics.

- The Case Management Discussion

The case called for a further Case Management Discussion (CMD) by way of conference call on 17 July 2020. Previous CMDs have been held in relation to this case. At the last CMD on 12 March 2020 the Applicant was asked to provide further information and for written consent from Ms Lukenics for him to deal with matters on her behalf. The Respondent, who did not appear on that occasion, was also warned

that a decision in relation to this application could be made at the next CMD and that he should either attend, be represented or make detailed representations for the next CMD. Mr Markevicious attended the CMD, but there was no appearance by or on behalf of the Respondent. Prior to this CMD the Respondent did reply by email of 25 June 2020 to the notification letter for this CMD of even date. This response merely reiterated the position he had advanced prior to the last CMD which was:

“Please address the property owner and holder of all rent and deposit. Tenet will confirm his bank details and name as previously provided.”(sic)

The Tribunal was therefore satisfied that the Respondent was aware of the CMD on 17 July 2020 and had chosen not to appear or be represented. It would appear that he wished to rely upon the previously stated position that he was not the landlord and was merely “...acting as a go between for the landlord...” and that he had not personally received the rent or the deposit.

- Findings in Fact and Law
 - 1) That the Applicant entered into a Private Residential Tenancy for the property at 41 Morris Street, Perth PH1 2SZ with a start date of 7 November 2018.
 - 2) That the Private Residential Tenancy Agreement was dated 6 and 7 November 2018.
 - 3) That the party detailed as the landlord in that agreement was the Respondent and this was not qualified in any way and no other party was designed or referred to in that agreement as being the landlord.
 - 4) That the party detailed as “Letting Agent” in that agreement was Aberdein Considine of 5-9 Bon Accord Street, Aberdeen.
 - 5) That the Respondent is registered as the landlord for the property at 41 Morris Street, Perth PH1 2SZ.
 - 6) That the Applicant is entitled to treat the Respondent as the landlord and/or seek to enforce contractual obligations for the purpose of the tenancy agreement dated 6 and 7 July 2018.
 - 7) That on or around 8 November 2018 the Applicant paid the sum of £1,419.00 to Aberdein Considine in relation the tenancy at 41 Morris Street, Perth PH1 2SZ of which £824 related to the security deposit.
 - 8) That the Private Residential Tenancy Agreement between the Applicant and the Respondent ended on or around 30 September 2020 following the Applicant giving Notice to Leave and vacating the property at 41 Morris Street, Perth PH1 2SZ.
 - 9) That the security deposit of £824 has not been returned to the Applicant.
 - 10) That the security deposit belongs to the Applicant.
 - 11) That no reasons exist to justify its retention.
 - 12) That the Applicant is entitled to be paid the sum of £824 by the Respondent.
- Reasons for Decision

From the terms of the documentation before the Tribunal it was clear that the Applicant entered into a lease with the Respondent. In terms of the lease itself, the Respondent was listed as being the landlord and his registration number was listed. Th letting agents completed the paperwork in this manner, presumably on the basis

of the instructions they received from the Respondent. Whilst it is noted that the Property is owned by another person, that is not determinative of the issue. Either the Respondent was entitled to let the Property (in a representative capacity or even as mid-tenant) or he was acting as an agent for an undisclosed principal. In either case, the Applicant is entitled to seek to enforce any contractual obligations against the Respondent for reasons set out more fully in the CMD note of 12 March 2020. It is clear that the monies by way of deposit were paid to Aberdeen Considine who were acting in the capacity as agents for the Respondent. There has been nothing advanced by the Respondent to suggest that the Applicant is not entitled to the return of the monies paid (for example a damage claim against same). All that has been suggested is that he was not the landlord and that he personally did not receive the deposit. Whether or not what he has suggested is true is irrelevant for the purposes of this application and there was nothing before the Tribunal that relevantly disputed the evidence before it. In the event that the Respondent was acting as an agent for a third party, then he would be entitled to a right of relief against his principal. As the tenancy has now ended and there being no cogent reason advanced to allow retention of the sums paid by way of security deposit, the Applicant is entitled to have it returned.

- Decision

The order for payment of the sum of £824.00 is granted against the Respondent.

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 Cowan

Legal Member/Chair

_____ **17 July 2020** _____
Date