

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) under Section 16 of the Housing (Scotland) Act 2014 and Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

Chamber Ref: FTS/HPC/PR/19/2346

Re: Property at 82 Shetland Place, Kirkcaldy, Fife, KY1 3DX ("the Property")

Parties:

Mr Emil Feraru, Mrs Alina Mariana Feraru, 13 Donald Street, Dunfermline, KY12 0BY; 13 Donald Street, Dunfermline, KY12 0BY ("the Applicant")

Mr Graeme Mackay, Flat 3, 10 East Pilton Farm Crescent, Edinburgh, EH5 2GH ("the Respondent")

Tribunal Members:

George Clark (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be granted without a Hearing and made an Order for Payment by the Respondent to the Applicant of the sum of One Thousand Pounds (£1,000).

Background

By application, received by the Tribunal on 26 July 2019, the Applicant sought an Order for Payment in respect of the failure of the Respondent to lodge a tenancy deposit in an approved tenancy deposit scheme as required under The Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations").

The application was accompanied by a copy of a Private Residential; Tenancy Agreement between the Parties commencing on 27 October 2018, which, as a result of handwritten amendments, appeared to indicate a monthly rent of £430. The print version stated the rent to be £450. The deposit was stated in the print version to be £600, but this had been scored out by hand and, in the application, the Applicant stated that the deposit was £500.

The Applicant also provided a Payment Summary showing payments of £730 on 27 October 2018, £200 on 6 November 2018, £430 on 25 November 2018 and £430 on the 26th of each month from November 2018 to April 2019 inclusive.

In addition, the Applicant provided the Tribunal with copies of e-mails from SafeDeposits Scotland, My Deposits Scotland and Letting Protection Scotland, all of whom confirmed that the tenancy deposit had not been lodged with them.

On 1 October 2019, the Tribunal advised the Parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written representations by 22 October 2019.

On 11 October 2019, the Respondent made written representations to the Tribunal. He apologised for what had happened. He had used My Deposits Scotland with all his previous tenants, but had not done so in the present case as the Applicant had been homeless and was unable to afford the full deposit of £600. The Respondent had allowed the Applicant to pay it by instalments, but he had never received the full deposit. Being inexperienced and only having one let property, the Respondent had not known that he could lodge partial payments of the deposit.

The Respondent stated that the rent had been £450 per month and the deposit £600. On 27 October 2018, he had received £730 (£450 rent plus £280 towards the deposit), on 6 November 2018 £200 towards the deposit and on the 27th of each month from November 2018 to April 2019 inclusive the sum of £430. He added that each of these payments was £20 short, the rent being £450 per month.

The Applicant submitted a print of the Private Residential Tenancy Agreement, providing for rent at £450 and a deposit of £600 and contended that the Respondent had tampered with the version that had been submitted with the application. In support of this claim, he provided the Tribunal with screenshots of the adverts he had placed on the Open Rent and Gumtree websites, both of which stated an asking rent of £450 and one of which also said the deposit would be £600.

The Applicant had viewed the Property on 27 October 2018 and had asked to move in immediately on payment of the first month's rent and part of the deposit. The Respondent's partner had received a copy of the signed tenancy agreement via WhatsApp on 30 October, but could not now access it had by then been deleted by the Respondent. The Respondent was willing to lodge the deposit in the scheme now, to allow the Respondent the opportunity to claim it back and the Respondent the opportunity to make a claim against it in respect of the rent arrears of £20 per month and a number of additional deductions the Respondent would be seeking.

The Respondent provided the Tribunal with copies of confirmations by My Deposits Scotland of the lodging of deposits relative to the Property on 14 April 2015, 29 January 2017 and 17 June 2019.

The Respondent also produced a copy of a lengthy message sent to the Applicant after the tenancy ended, in which the Respondent claimed that the signed tenancy agreement had specified rent at £450 per month with a deposit of £600, the rent had been short by £20 each month, creating a deficit of £140 and the deposit had not been paid in full despite numerous attempts by the Applicant to have this rectified. It also stated that the Applicant had vacated the Property on 23 May 2019, leaving it unlocked and had failed to clean it or to return the keys. The Respondent had had to employ a cleaner at a cost of £50 and had had to change the locks and obtain replacement electric key fobs at a cost of £50. The Respondent was also making a claim for a replacement hob costing (with installation and testing) £249, £20 for replacement of two missing lamps and £12 in respect of a missing mattress protector.

Case Management Discussion

A Case Management Discussion was held at Fife Voluntary Action, 16 East Fergus Place, Kirkcaldy on the afternoon of 5 November 2019. The Applicant was present. The Respondent was present and was represented by Barbara Alvey.

The Chair of the Tribunal advised the Parties that the discussion would not include arguments as to whether the Respondent was entitled to make deductions from the deposit. The only matter for consideration was the admitted failure to lodge the deposit in an approved scheme.

The Parties were not agreed as to the level of rent or the amount of the deposit. The Applicant contended that the handwritten amendments had been made by the Respondent before the lease had been delivered through the letterbox for the Applicant to sign, as the Applicant had indicated an intention to live in the Property long-term. The Respondent denied having made the handwritten amendments, but accepted that a discussion on rent had taken place. The Respondent would not, however, have agreed to any reduction in rent during the first six months of the tenancy. The Respondent had written to the Applicant regarding arrears and the shortage on the deposit payment, but had not thought it necessary to lodge copies in connection with the present proceedings.

The Respondent advised the Tribunal that £480 had now been lodged with My Deposits Scotland and the Tribunal told the Parties that it would be for the tenancy deposit company to consider whether any deductions should be made. That would involve their deciding whether the rent was £450 or £430 and whether the deposit was £500 or £600.

The Respondent's representative told the Tribunal that the failure to lodge the deposit was accepted and that the Respondent had simply not known that the instalment payments should be lodged. The Respondent's position remained that the full deposit had not been paid.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required and that it would determine the application without a Hearing.

Regulation 3 of the 2011 Regulations states that a landlord must, within 30 working days of the beginning of the tenancy pay the deposit to the scheme administrator of an approved scheme and, under Regulation 10, if satisfied that the landlord did not comply with any duty in Regulation 3, the Tribunal **must** order the landlord to pay to the tenant an amount not exceeding three times the amount of the tenancy deposit.

In order to arrive at a Decision, the Tribunal had to determine the amount of the deposit.

The Tribunal noted that the Parties were not agreed as to the amount of the deposit. The Applicant stated that it was £500 and had been paid in two instalments. The Respondent insisted that it was £600, of which £480 had been paid. Neither party had produced a signed copy of the tenancy agreement, which would have determined the matter, but the Respondent had accepted rental payments at £430 on six separate occasions and had not provided the Tribunal with any evidence to the effect that the Applicant was not paying the full contractual rent or had failed to pay the deposit in full, apart from the Respondent's e-mail to the Applicant sent after the tenancy had terminated. Accordingly, the Tribunal decided, on the basis of the evidence before it and on the balance of probabilities, that the tenancy deposit had been £500, £300 of which had been paid with the first rent and the balance of which had been paid on 6 November 2018. The maximum sanction that the Tribunal could impose on the Respondent was, therefore, £1,500.

The Tribunal noted and took into account the fact that the Respondent had, in relation to two previous tenancies and in relation to a tenancy granted after the Applicant vacated the Property, lodged the deposits with My Deposits Scotland and accepted that the reason for not having done so in the present case was that the deposit was being paid up in instalments. The Respondent had stated that he had not been aware that instalments should be lodged in a tenancy deposit scheme. The view of the Tribunal was that ignorance of the Regulations is no excuse and that the Respondent had received two substantial payments from the Applicant which were clearly deposit payments of £300 and £200, which should have been lodged in a tenancy deposit scheme.

The Respondent's failure to lodge the deposit, whilst not wilful, had denied the Applicant the opportunity of contesting the deductions which the Respondent applied. These had amounted to £521 and, as he had received £500, the Respondent had not refunded any part of the deposit to the Applicant.

It was not part of the Tribunal's function to determine whether any deductions could have been made from the deposit, but it was very likely that the Applicant would have contested at least the alleged rent arrears, and the Respondent's claims would have been adjudicated independently by the tenancy deposit scheme if the Respondent had complied with his legal obligations. The Respondent had frustrated the purpose of the Regulations and the Applicant's funds had not only been at risk for the seven months duration of the tenancy, but had in effect been lost by being retained by the Respondent. The Tribunal noted, however, that £480 had now been lodged with My Deposits Scotland, who would adjudicate on what amount, if any, should be deducted from the amount lodged.

Having considered carefully all the evidence before it, the Tribunal decided that the amount payable by the Respondent to the Applicant as being fair, just and proportionate was £1,000.

Decision

The Tribunal determined that the application should be granted without a Hearing and made an Order for Payment by the Respondent to the Applicant of the sum of One Thousand Pounds (£1,000).

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.

G.Clark

Legal Member/Chair

5 November 2019
Date