



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 57 (2) or section 58 (2) of the Private Housing (Tenancies) (Scotland) Act 2016 & Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/20/1793 & FTS/HPC/PR/20/1794

Re: Property at 3 Coniston Drive, Bellshill, ML4 2JZ (“the Property”)

Parties:

Ms Thi Hoai Thuong Le, 428A Main Street, Wishaw, ML2 7PL (“the Applicant”)

Mr Scott Hutton, 32 Lomond Court, Coatbridge, ML5 3PW (“the Respondent”)

Tribunal Member:

Lesley-Anne Mulholland (Legal Member)

Summary of Discussion

1. An application has been made under reference FTS/HPC/PR/20/1793 asking The Tribunal to find that the Respondent failed to enter into a written Private Residential Tenancy Agreement and that he unlawfully evicted her from the tenancy at 3 Coniston Drive, Bellshill ML4 2JZ.
2. An application for a Payment Order has been made and allocated case reference FTS/HPC/PR/20/1794 on the basis that the applicant was unlawfully evicted and because the Respondent failed to make payment of the deposit into an approved tenancy deposit scheme.
3. A Case Management Discussion was scheduled to take place on 8 February 2021. This was postponed as the Respondent had not been served with the notice for the Case Management Discussion as his whereabouts were unknown.
4. A further Case Management Discussion was convened on 1 March 2021 to consider both applications. Neither party appeared nor was represented. As the Respondent’s whereabouts were unknown, Mollie Yeats, Clerk, Scottish Courts and Tribunals Service, confirmed that the application and hearing date were advertised on the Service by Advertisement page of the website of the First-tier

Tribunal for Scotland Housing and Property Chamber from 25 January 2021 until 1 March 2021. Service of this notice is deemed to have been carried out 15 days after the initial publication date.

5. On 1 March 2021 the Case Management Discussion (CMD) was adjourned because the Respondent's address was available on the Landlord's register. I Directed service of all documents and notification of the CMD on the Respondent. A Certificate of Service by a Sheriff Officer confirms that the Parties had been properly notified of the CMD.
6. On 8 April 2021 the Applicant emailed the Tribunal asking for a postponement of the CMD of 9 April 2021 because she had to attend Court. Due to the late notice of this request, I decided that I would deal with this matter at the CMD.
7. At the CMD of 9 April 2021, neither party appeared nor was represented. I noted that the Applicant had failed to attend or be represented at the CMD on 1 March 2021 without explanation and had failed to comply with the Directions issued that day. No explanation had been proffered for this failure.
8. The Respondent failed to attend or respond to the application. He has not made contact with the Tribunal. The CMD was adjourned to 18 June 21 with Directions.
9. On 18 June 2021 the Applicant attended the CMD which had to be adjourned until 20 August 2021 as the Applicant required an interpreter. The Applicant was reminded that she had failed to comply with the Directions previously issued and that without a response, I may not be able to deal with this application justly and fairly and that her application may be dismissed if she continued to fail to comply with directions. The Applicant was signposted to the Housing and Property Chamber website which provides a list of organisations that may be in a position to assist her.
10. On 20 August 2021, the Applicant appeared at the CMD. The Respondent failed to appear without excuse. I decided to hear the application in the Respondent's absence as I was satisfied that he had been notified of the application.
11. According to the application, the Applicant claims that the Respondent failed to enter into a Private Residential Tenancy Agreement and that he wrongfully terminated the Tenancy. However, on 5 March 2021, the Applicant submitted a copy of the Private Residential Tenancy Agreement (PRT). Accordingly, the Applicant cannot succeed with this part of her claim and it is damaging to her credibility and reliability that she was prepared to claim in the application that she had never entered into a PRT when clearly, she had.
12. The second part of the claim relates to the claim that the Landlord evicted her unlawfully. The Applicant and Respondent Landlord entered into a Private Residential Tenancy Agreement on the 6 January 2020. She claims on her application that she was informed over a telephone call that she had to leave the property and was only given a few weeks' notice and that the Respondent charged her additional rent in May 2020 as he was concerned that she would

not leave. He kept the additional rent and deposit for alleged repairs despite the property being left in a good condition. The Applicant claims the sum of £1200.

13. On 1 March 2021 the following directions were issued:

DIRECTIONS FOR THE APPLICANT

- i. The Applicant is required to provide written details specifying the date she entered into the oral contract with The Respondent; the date she took up occupancy and the terms and conditions of any agreement between them. The Applicant is required to produce any evidence supporting her claim within 14 days of the date of this direction.
- ii. The Applicant is required to produce bank statements and/or any other evidence showing payment of the deposit and rent for the full period she occupied the property. If The Applicant cannot produce such evidence, she is required to provide a written statement setting out the reasons why such evidence is not available.
- iii. The Applicant asserts that The Respondent sent her an email and/or called her to let her know that she must vacate the property. The Applicant has failed to provide a copy of the email or details of the telephone conversation. The Applicant is required to produce all email correspondence between her and The Respondent relating to the property and/or full details of the telephone conversation she claims to have received requesting her to vacate the property.
- iv. In the event that The Applicant cannot produce the email correspondence asking her to vacate the property, she is required to state why not and she is required to provide full details of her recollection of the email, when it was sent and by whom and/or full details of the telephone conversation alongwith evidence of any response she made.
- v. The Applicant has to produce a written note of exactly what happened from the date she asserts that she received the email and/or telephone call asking her to vacate the property until The Respondent ceased communicating with her, as claimed.
- vi. The Applicant has to produce a written note of all monies she received from The Respondent alongwith bank statements or any other evidence showing this. If no such evidence is available, The Applicant is required to provide a reason for its absence.
- vii. The Applicant to provide a written note and evidence of all searches made with the approved tenancy deposit schemes; details of which can be found on the Scottish Government website.
- viii. If The Applicant cannot produce any of this evidence, she has to

provide a written signed statement explaining why she cannot, why this evidence is not available and what steps she has taken to produce it.'

14. On 5 March 2021 the Applicant submitted photographs, a series of text messages, an email setting out some information relating to her claim and a copy of the Private Residential Tenancy Agreement.
15. In that email, the Applicant claims that she informed the Landlord that she had coronavirus and that he required her to leave because of that. However, at the CMD on 20 August 2021, the Applicant changed her account and then stated that she was asked to leave the property after a disturbance there when the police were required to attend at the property. This inconsistency damages credibility.
16. The Applicant claims that she paid a deposit of £500 to the Respondent representing the first month's rent and the deposit of £500. Thereafter she paid rent in the sum of £500 per month as stated on the Private Residential Tenancy Agreement. The Applicant was directed to produce bank statements to demonstrate that the deposit and rent had been paid and also to provide a written statement providing details of when the deposit and rent was paid; to produce any receipts and if applicable, to provide a written statement setting out the reasons why receipts or evidence of payment could not be produced. The Applicant failed to fully comply with the Directions and accordingly, the Directions were issued again on the 9 April and 18 June 2021. The Applicant was put on notice that failure to respond to the Directions could lead to the Application being refused.
17. At the today's CMD, the Applicant claimed not to have received the Direction notices. I checked with the Clerk who confirmed that the Directions were issued by email on the 3rd of March 2021, 4th of May 2021 and 24th of June 2021. I am satisfied that the Applicant was properly notified of the Directions and has failed to fully comply with them. I do not accept her account that she did not receive the Direction Notices. This undermines her credibility and reliability.
18. The Applicant explained that she usually paid cash to the Landlord and was never given any receipts. It was only on a couple of occasions when he was on holiday that she made payment of rent by bank transfer.
19. The Applicant has not produced any evidence of either cash being taken from her own bank account to be transferred to the Landlord or any evidence or receipt to show that any money passed between them. This means that the only evidence of payment of a deposit and/or rent is the Applicant's unsupported assertion.
20. Accordingly, after hearing from the Applicant and having considered all the information before me, I am not satisfied, that the Applicant made payment of rent to the Landlord in cash and that the Landlord failed to provide her with any receipt.

21. In the application, the Applicant claims that the Respondent Landlord unlawfully evicted her as she was instructed to leave the property in May 2020 when she received a telephone call; that she was not provided with any notice in writing, and she was not provided with any information as required by law.
22. However, at the CMD on 20 August 2021, the Applicant claimed to have received an email from the Respondent asking her to leave the property. The Applicant failed to submit this before the CMD, despite been Directed to do so on three separate occasions. I allowed the Applicant to forward a copy of the email to my Clerk who in turn passed it on to me.
23. This shows that on the 28th of April 2020, the Respondent Landlord sent an email to the Applicant headed 'Notice to Vacate 3 Coniston Drive.' In that notice, the Respondent Landlord claims that he was required to provide the Applicant with 28 days' notice to quit as he needed to move back into the property and that in a telephone call on the 27th of April 2020, that the Applicant informed the Respondent that she wished to terminate the lease by giving 28 days' notice. The Landlord asked for any response to be made within 14 days otherwise he would take the failure to respond as an acceptance that the Applicant intended to leave the property.
24. The Applicant has failed to produce any further correspondence that she had with the Respondent during those 14 days. Whilst I am satisfied that the Respondent failed to provide the Applicant with the correct paperwork in relation to his request that she vacate the property, I cannot be satisfied that the Applicant did not also inform the Landlord that she intended to vacate the property and fail to provide him with the correct paperwork. The Applicant has provided an inconsistent account of what happened towards the end of the tenancy and has failed to comply fully with Directions. Accordingly, I am not satisfied that the Applicant has proved, on the balance of probabilities, that she did not notify the Landlord that she also wished to vacate the property.
25. It is clear from the series of text messages that the Applicant informed the Respondent that she was finding it difficult to find another property to rent because of coronavirus and that she has a three-year-old child. It is clear in the communications between them that the Respondent was insistent that she leave the property in May 2020.
26. At the CMD on 20 August 2021, the Applicant claimed that the police were called to the property, and that the Respondent later attended her home and asked her to leave. This is inconsistent with the email that the Respondent sent to the Applicant on 28 April 2020, referred to before. The Applicant has failed to produce any evidence that the police were called to her property and given that she has provided inconsistent accounts of what happened and has failed to comply with Directions to provide this information in writing, I am not satisfied that the Applicant is a credible and reliable witness and accordingly, I cannot accept what she says.
27. The Applicant claims that she vacated the property on 28 May 2020. I am

satisfied that the Respondent Landlord notified her of his intention to move into the property on 28 April 2020, thereby providing the Applicant with more than 28 days' notice. Whilst I am satisfied that the Respondent Landlord failed to provide the Applicant with the correct paperwork as required by law in relation to the notice to quit, I am not satisfied that the Applicant did not also notify the Landlord of her intention to quit the property, as set out in his email of 28 April 2020, as the Applicant has not produced evidence that she responded within the 14 days and because she has provided inconsistent accounts which have undermined her credibility and reliability.

28. Accordingly, the Applicant has failed to demonstrate, on the balance of probabilities, that the Respondent unlawfully evicted her. I find that the Applicant and Respondent Landlord did enter into a written Private Residential Tenancy Agreement. The applicant has failed to demonstrate that she paid a deposit to the Respondent landlord and that he failed to make payment of the deposit into an approved tenancy deposit scheme.

29. Accordingly, the applications are refused.

Outcome

The Applicant's claims are refused.

NOTE: This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to tribunal members in relation to any future proceedings on unresolved issues.



Lesley-Anne Mulholland
Legal Member

24 August 2021
Date