



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 Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“The Regulations”)

Chamber Ref: FTS/HPC/CV/22/2422 and FTS/HPC/PR/22/2418

Re: Property at 29 York Street, Dufftown, Keith, Moray, AB55 4AU (“the Property”)

Parties:

Miss Kathryn Stott, Mr Ian Beattie, 24 Sinergatismou Street, Pegia, Paphos, 8560, Cyprus (“the Applicants”)

Mrs Valerie Marshall, Mr Robert Marshall, Potts of Rayne farm, Mickle Wartle, Inverurie, AB51 5DE (“the Respondents”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) decided to grant both Applications and in respect of Application with reference FTS/HPC/CV/22/2422, made a Payment Order against the Respondents in the sum of £400.00 and in respect of Application with reference FTS/HPC/PR/22/2418, further orders the Respondents to pay the Applicants the further sum of £1,200.00.

Background

In Application with reference FTS/HPC/CV/22/2422, the Applicants seek a Payment Order for £400.00 from the Respondents. They contend that this sum is lawfully due to be paid to them because they paid a £400.00 deposit to the Respondent in respect of a tenancy agreement between the parties and the Respondents have refused to pay it back.

In Application with reference FTS/HPC/PR/22/2418, the Applicants seek an award under the Regulations in respect of the alleged non-registration of that same deposit in an approved scheme as per Regulation 3.

The Case Management Discussions

Both Applications called for a Case Management Discussion (CMD) by conference call at 10 am on 5 October 2022. The Applicants were both present. Mrs Valerie Marshall, the First Respondent was also present and indicated that she would also be representing the interests of the Second Respondent, Mr Robert Marshall who was also her husband.

At the CMD, Mrs Marshall accepted that there had been a Private Residential Tenancy agreement between the parties which had commenced on 10 April 2021 and that the Respondents had received a deposit of £400.00 as per the terms of that agreement. Mrs Marshall also confirmed that they had failed to register the deposit in an approved scheme as demanded by the Regulations. Mrs Marshall's reason for the breach was that she "*forgot*" about the deposit. Ms Marshall also agreed that the Applicants had vacated the Property on 2 May 2022.

Mrs Marshall has also submitted A Time to Pay Application in respect of FTS/HPC/CV/22/2422. In this, the Respondent asked for time to pay back the Applicant's own deposit to them. The Respondents admitted liability for the £400.00 Payment Order sought in FTS/HPC/CV/22/2422 but wished to pay this back at the rate of £200.00 per month.

The Applicants disputed the account given of the Respondents' financial position. They said it made no mention of Robert Marshall's finances. The Tribunal did also consider that the Time to Pay Application sounded like an admission that the Applicants' money had in fact been spent by the Respondents.

Mrs Marshall also suggested that any award made under Regulation 10 should be at the lowest end of the spectrum, as it was just the result of a simple mistake. The Applicants considered that the Respondents' conduct was such that any award should be made at the highest end of the spectrum open to the Tribunal under Regulation 10.

The Tribunal decided to continue both Applications to a Hearing where a full Tribunal would hear evidence and resolve the issues in dispute.

The Hearing

The Application called for a Hearing by conference call at 10 am on 22 December 2022. The Applicants were both personally present. The First Respondent, Ms Valerie Marshall was personally present and explained that she was also again representing the interests of the Second Respondent, Mr Robert Marshall.

The Tribunal began by confirming that neither party had any preliminary matters to raise. The Tribunal then again confirmed with parties that the facts considered as having been agreed at the CMD, were understood and acknowledged by all.

Having done so, the Tribunal began hearing evidence from parties and it was agreed that it was appropriate to hear from Ms Marshall first.

Ms Valerie Marshall.

Ms Marshall is employed as a health care support worker with the NHS. She is 56 years of Age. The Second Respondent, Mr Robert Marshall is her husband and he is employed as a farmer. They became owners of the Property following on from the death of their 26 year old son 5 years ago. Ms Marshall described simply having "*forgotten*" to register the £400.00 deposit received from the Applicants with an approved scheme.

Ms Marshall could not really offer much more explanation than this and advised that she did take steps to educate herself about the duties of being a landlord but had simply forgotten to register the deposit. Ms Marshall made frequent reference to being "*annoyed*" at the Applicants, as she considered that they had vacated the Property after providing only one month's notice rather than two months notice. Ms Marshall admitted that the Applicants had been messaging her frequently asking for their deposit back and she had "*blocked them*" - also because she was "*annoyed*" at them. Ms Marshall indicated that she would also like time to pay back the £400.00 deposit although it was clear to the Tribunal that this was primarily motivated by her annoyance at the Applicants rather than financial necessity. Ms Marshall conceded, when questioned by the Tribunal, that she did not strictly need time to pay.

The Applicants were given the opportunity to question Ms Marshall and declined to do so. The Tribunal asked questions to ensure Ms Marshall's position was properly understood.

Ms Marshall confirmed that she was happy that all that she had said to the Tribunal be treated as her evidence in respect of both Applications.

The Tribunal then heard from the Second Applicant, Mr Ian Beattie.

Mr Ian Beattie.

Mr Beattie is 76 years of age and is retired and now lives in Cyprus. He had been a professional soldier in the British Army. His evidence was in short compass. He described his annoyance at having to chase for his deposit back and gave evidence that the Respondent had "*blocked*" him on an online messaging platform when she presumably became fed up with his requests for the return of the deposit. He also gave evidence that

when the Applicants first left the Property, Ms Marshall advised that the deposit would be returned straight away which he described as simply never having materialised.

Ms Marshall was given the opportunity to question Mr Beattie but declined to do so. The Tribunal asked certain questions of Mr Beattie. Mr Beattie also indicated that the First Applicant, Ms Stott did not intend to give evidence.

Mr Beattie confirmed that he was happy that all that he had said to the Tribunal be treated as his evidence in respect of both Applications.

Having heard evidence and having considered both Applications, the Tribunal adjourned to consider its decision before making the following findings in fact.

Findings in Fact

- I. The parties entered into a tenancy agreement whereby the Respondents let the Property out to the Applicants on a Private Residential Tenancy which commenced on 10 April 2021;*
- II. The Applicants paid the Respondents a deposit of £400.00 at the commencement of the tenancy;*
- III. The Respondents failed to register the deposit received in an approved scheme as required by Regulation 3;*
- IV. When the Applicants left the Property on 2 May 2022, the Respondents failed to return the deposit to the Applicants and ultimately blocked the Applicants from communicating with them further;*
- V. The Respondents had no intention of returning the deposit to the Applicants as they were annoyed with them about the timing of their departure from the Property;*
- VI. There is no lawful reason for the Respondents to retain the £400.00 deposit which rests as owed to the Applicants;*
- VII. There is no relevant mitigation before the Tribunal that might adequately explain the failure of the Respondents to register the deposit received with an approved scheme as demanded by Regulation 3 .*

Outcome

Having made the above findings in fact, in respect of Application with reference FTS/HPC/CV/22/2422, The Tribunal made a Payment Order against the Respondents in the sum of £400.00.

The Tribunal refuses the Time to Pay Application lodged by the Respondents. The Time to Pay Application is not motivated by any financial necessity on the part of the Respondents but instead by a desire to disrupt the Applicants.

The financial information submitted by the Respondents in support of the Time to Pay Application also discloses several bank accounts with balances that might comfortably settle the awards made without any necessity for time to pay. The Time to Pay Application itself is also incomplete as it simply ignored the assets in the form of significant cash savings which were clearly held by the Respondents in the bank accounts disclosed.

In respect of Application with reference FTS/HPC/PR/22/2418, the Tribunal having considered Regulation 10, finds no reason to limit or restrict the award made under that Regulation and consequently orders that the Respondents pay the Applicants a sum equal to three times the value of the deposit meaning that the Respondents are further ordered to pay the Applicants the sum of £1,200.00.

The decisions of the Tribunal were unanimous.

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.

Andrew McLaughlin

Legal Member/Chair

22 December 2022

Date