



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 10 of the Tenancy Deposit
Schemes (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/23/0120

Re: Property at 19B East High Street, Forfar, Angus, DD8 2EL (“the Property”)

Parties:

Mrs Zoe Roy, 23 Little Causeway, Forfar, Dundee, DD8 2AD (“the Applicant”)

**Miss Caroline Yule, 140 Dundee Road, Forfar, Angus, DD8 1JB (“the
Respondent”)**

Tribunal Members:

Yvonne McKenna (Legal Member)

Decision (in absence of the parties)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the application be dismissed due to a lack of want
of insistence.**

Background

1. An application was submitted dated 13 January 2023 in terms of Rule 103 (Application for order for payment where the landlord has not paid the deposit into an approved scheme) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended.
2. The Applicant sought an order for payment on the basis that the Respondent was said to have breached the Tenancy Deposit Schemes (Scotland) Regulations 2011.

3. By decision dated 17 January 2023, a Convenor of Housing and Property Chamber, having delegated power for the purpose, referred the application under Rule 9 of the Rules to a case management discussion (“CMD”).

4. The Notice of Acceptance was intimated to the Applicant on 17 January 2023. The Tribunal issued letters to the parties dated 10 February 2023 and advised them of the date, time and conference call details of the said CMD. In that letter, the parties were also told that they required to take part in the discussion and were informed that the Tribunal could make a decision on the application if the Tribunal had sufficient information and considered the procedure to have been fair. The Respondent was invited to make written representations by 3 March 2023.

5. The Respondent submitted written representations on 6 March 2023.

The Case Management Discussion (CMD) 16 March 2023

6. The CMD took place by conference call. The Applicant joined the call personally and the discussion proceeded in the absence of the Respondent. The Tribunal observed that whilst documentary evidence has been submitted which demonstrated that no deposit was secured in an approved scheme, there appeared to be some doubt from the supporting papers about whether a deposit was paid and if so, for how much. The Applicant explained that the bank account that she operated at the time that the tenancy commenced had since been closed; she had been unable access bank statements which may show when the deposit was paid. The Applicant recalled that she borrowed money from her mother to fund the payment of the deposit. The Applicant indicated that she would have to request statements from her bank in relation to the closed account.

7. The Tribunal adjourned proceedings to a further CMD to allow the Applicant an opportunity to ingather copy bank statements to demonstrate when she paid the deposit to the Respondent and how much was paid.

8. Separate Directions were issued to the Applicant in the following terms: -

“The tribunal, on its own initiative and for the purpose of making inquiries, give the following Direction to the Applicant as to the conduct and progress of this Application in terms of Section 16 of Schedule 1 to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017: The

Applicant is required to provide: 1. Evidence of payment of a deposit, such as a bank statement showing details of the payment made. The said documentation should be lodged with the Chamber no later than close of business 7 days prior to the new Case Management Discussion.”

9. No further documentation was received from the Applicant in advance of the CMD on 2 May 2023.

10. On 1 May 2023 at 17.55 the Applicant emailed the Tribunal stating that she had a hospital appointment and was unable to attend the CMD fixed for the 2 May 2023. Her e-mail was in the following terms: -

“Afternoon,

Apologies for the late email. I have got a hospital appointment tomorrow and will be unable to join the conference call. I am still awaiting bank statements from the bank. I have chased these and have been told they will be here by the end of the week.

Apologies again for the late email, baby brain should be a recognised condition.

Yours
Zoë Roy”

CMD 2 May 2023

11. The CMD called by teleconference at 2pm on the 2 May 2023. This had been intimated by letter to parties in advance of the CMD. Neither party was in attendance.

12. The Tribunal adjourned proceedings and continued the case to a further CMD to allow the Applicant to participate and for the further evidence requested in the Tribunal’s Direction to be provided. It was highlighted by the Tribunal that this would be a final continuation for this purpose and if no evidence was provided and the Applicant wished to proceed with the Application, then a Hearing date may be fixed at the next CMD.

CMD 5 July 2023

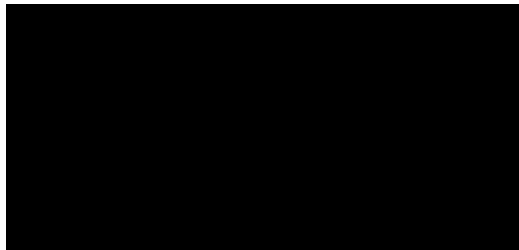
13. The CMD called at 10am by teleconference. In the intervening period between the 2 May 2023 and 5 July 2023 the Tribunal had received no representations from either party.

14. The date and time of the CMD had been intimated to parties in advance by e-mail communication on 6 June 2023. The Tribunal afforded parties five minutes

beyond the calling time of the CMD. Neither party joined the conference call. In the circumstances the application was dismissed due to a lack of want of insistence.

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.



Legal Member/Chair

5 July 2023

Date