



**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**

Chamber Ref: FTS/HPC/PR/19/2410

Re: Property at 25 Heathryfold Place, Aberdeen, AB16 7ED (“the Property”)

Parties:

Ms Zoyka Neykova, Cluny Hotel, 2 High Street, Buckie, AB56 1AQ (“the Applicant”)

Mrs Gail Davidson, 55 Bingham Crescent, Milltimber, Aberdeen, AB13 0HU (“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 decided without a Hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £500.

Background

By application, received by the Tribunal on 31 July 2019, the Applicant sought an Order for Payment in respect of a tenancy deposit. She had paid £500 to the Respondent on or about 7 March 2019, in respect of a tenancy that was due to commence on 23 March 2019. The Applicant had, however, prior to the commencement date, decided not to take the tenancy and the Respondent had sought to retain from the deposit losses she had incurred as a result of having to re-advertise the Property. The Respondent had not paid the deposit into an approved tenancy deposit scheme.

On 21 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 11 November 2019.

On 24 October 2019, the Respondent advised the Tribunal that she had attempted to resolve the issue. The Applicant, however, had not been prepared to accept return of

the deposit under any deductions and had also declined a subsequent offer to refund the full deposit. In later representations received on 3 November 2019, she stated that she thought it unfair that someone could reserve a flat and pay a deposit, cause the landlord to cancel paid adverts and then 2 days before the move-in date, call and say they had changed their mind. She noted that the Regulations were changing as of 11 November and that, in such a situation as this, where the lease did not last for 30 days, there was no requirement for the landlord to lodge a deposit in a tenancy deposit scheme.

Case Management Discussion

A Case Management Discussion was held at the Credo Centre, John Street, Aberdeen on the morning of 21 November 2019. The Applicant was present with her daughter and son and was assisted by an interpreter. The Applicant had nothing to add to the written representations.

The Respondent had indicated on 24 October that, whilst she would be unable to attend the Case Management Discussion, she would be happy to be on the telephone or Skype. The Tribunal had not regarded this as a formal request for teleconference facilities and the Case Management Discussion proceeded in her absence but during the Case Management Discussion she called the Tribunal, having expected to be participating by telephone. The Legal Member spoke with the Respondent, who was content to allow the Case Management Discussion to proceed, as it was not possible to set up teleconference facilities.

Reasons for Decision

Regulation 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 decide the application without a Hearing.

Rule 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 states that a landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 days of the beginning of the tenancy, pay the deposit to the scheme administrator of an approved scheme. "Relevant tenancy" is defined as any tenancy or occupancy arrangement in respect of which a house is occupied by someone unconnected to the landlord. The Tribunal determined that the tenancy in the present case had not in fact commenced and that, as the house had never been occupied by the Applicant, it was not a "relevant tenancy", so the obligation to pay the deposit into an approved scheme did not arise. That did not, however, mean that the Respondent was entitled to retain it, as it was a deposit against default by the Respondent in respect of her obligations under a tenancy which had never commenced. The Respondent had not provided any vouching for and deductions she felt should be made from it, so the Tribunal determined that the whole deposit should be repaid to the Applicant. The Tribunal noted that the Respondent had stated in her e-mail of 24 October 2019 that she had already offered to do this. The Applicant advised the Tribunal that she had paid the entire deposit herself.

Decision

The Tribunal determined that the application should be decided without a Hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £500.

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. C
Legal member/Chair

 21 November 2019
Date