



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

Chamber Ref: FTS/HPC/PR/23/3763

Re: Property at Flat 13, Old Moffat Academy, Moffat, DG10 9FA (“the Property”)

Parties:

Ms Lindsay Gordon, Mr David Lupton, Bedrock, Carsluith, DG8 7DN (“the Applicants”)

Moffat Academy Limited, Old Academy Road, Moffat, DG10 9FA (“the Respondent”)

Tribunal Members:

Nairn Young (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

- Background

This is an application for an order for payment of a sanction in relation to an alleged failure on the part of the Respondent to pay a tenancy deposit paid to it by the Applicants into an approved scheme and carry out the other duties incumbent on it in terms of reg.3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (‘the Regulations’). It called for a case management discussion (‘CMD’) at 2pm on 29 January 2024, by teleconference. The Applicants were on the line in person. Nobody appeared on behalf of the Respondent. The commencement of the CMD was delayed by 10 minutes, in case there was some technical issue; but there remained no contact.

The application, with notice of the CMD, was served on the Respondent on 6 December 2023, by sheriff officers. The Tribunal was therefore satisfied that the Respondent had chosen not to appear and that it was accordingly in the interests of justice to proceed in its absence.

- Findings in Fact

1. The Applicants rented the Property from the Respondent in terms of private residential tenancy with a start date of 20 June 2022.
2. In terms of that agreement, a deposit of £600 was paid to the Respondent by the Applicants on 7 June 2022.
3. The Respondent did not pay the deposit into an approved scheme, or provide any of the information required by regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ('the Regulations').
4. The Applicants' tenancy ended on 19 August 2023, when they left the Property.
5. The Applicants requested repayment of the deposit and were told by the Respondent that it had paid the deposit into an approved scheme.
6. The Respondent did not engage with the Applicants when they attempted to establish what happened to the deposit, until 2 October 2023, shortly before the raising of this application, when the deposit was repaid in full, without further explanation.
7. The Respondent is a business which operates as a landlord of several properties.

- Reasons for Decision

8. The findings in fact above are the relevant facts as taken from the application, which was not opposed by the Respondent, and the answers to some questions asked by the Tribunal at the CMD.
9. The Respondent has shown a worrying disregard for the duties incumbent upon it as a landlord. This is evident not just from its complete failure to comply with the terms of reg.3 of the Regulations; but also from its attempt to cover up that failure, its failure to engage with the Applicants in addressing the matter and its disregard for the Tribunal process, which extended even to failing to appear at the CMD. These failings are made even more concerning by the fact that it is a company whose business it is to act as a landlord and that it does so in relation to several properties.
10. In these circumstances, the Tribunal considered that a sanction at the top end of the scale would be appropriate to reflect the gravity of the Respondent's failure. It took into account, however the fact that the deposit has been returned in full, which offers some small mitigation. It therefore granted an order for payment to the Applicants of two-and-a-half times the deposit, or £1,500.

- Decision

Order made for payment by the Respondent to the Applicants of the sum of ONE THOUSAND, FIVE HUNDRED POUNDS STERLING (£1,500).

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.

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Legal Member/Chair

29/01/2024

Date