

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”) and Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).

Chamber Ref: FTS/HPC/PR/23/4527

Re: Property at 47C Reid Street, Dunfermline, KY12 7EE (“the Property”)

Parties:

Miss Ami Smith, 7 Leadsid Crescent, Dunfermline, KY12 0NX (“the Applicant”) per her representatives Frontline Fife, 59, Viewforth Street, Kirkcaldy, KY1 3DJ (“the Applicant’s Representatives”)

Ms Domenica Coxon, 51 Bruntsfield Crescent, Dunbar, EH42 1QZ (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”), having found that the Respondents did not comply with Regulation 3 of the Regulations, determined that an Order for Payment in the sum of SIX HUNDRED POUNDS (£600.00) Sterling be granted.

1. By application received on 12 December 2023 (“the Application”), the Applicant’s Representatives applied to the Tribunal for an Order in terms of Regulation 10 of Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”).
2. The Application comprised a copy of a tenancy agreement between the Parties with an entry date of 17 January 2023, copy receipt for the deposit of £475.00 paid by the Applicant to the Respondent on 10 January 2023 and copy correspondence from SafeDeposit Scotland confirming receipt of the deposit on 23 November 2023. The Application was accepted by the Tribunal and a Case Management Discussion (the “CMD”) was fixed for 21 March 2024 at 14.00 by telephone conference and intimated to the Parties.
3. Prior to the CMD, both Parties lodged written submissions. The Respondent’s submission explained that a difficult birth had occurred shortly before the tenancy began had had a significant impact on her and stated that the Applicant had left the Property in a poor condition. The Applicant’s submissions stated that she had had a

delay from 16 December 2023 to 28 December 2023 for the release of the deposit to her. The Applicant did not comment on the condition of the Property.

CMD

4. The CMD took place on 21 March 2024 at 14.00 by telephone conference. The Applicant did not take part and was represented by Ms. I. Watson of the Applicant's Representative. The Respondent took part and was not represented. She was supported by her partner.
5. The Tribunal asked if the Respondent accepted a breach of the Regulations which she did. The Tribunal explained that, in terms of the Regulations, the Tribunal was bound to make an Order and so the only issue for the Tribunal was the amount of the Order.
6. Ms. Watson stated that the Applicant sought twice the amount of the deposit as she had been inconvenienced financially by the delay in the deposit being repaid. Ms. Watson stated that the late lodging of the deposit had impact on the approved provider's ability to repay the deposit.
7. The Respondent offered payment of an amount equivalent to the deposit. With references to the circumstances of her pregnancy and her child's birth, she explained that the lodging of the deposit had slipped her mind. She confirmed that she was aware of the Regulations and had lodged deposits before. She confirmed that the deposit had been held in her bank account. The Respondent was apologetic in respect of her actions.

Findings in Fact

8. From the Application and the CMD, the Tribunal made the following findings in fact: -
 - i) There had been a tenancy of the Property between the Parties at a monthly rent of £475.00;
 - ii) A tenancy deposit of £475 was paid by the Applicant to the Respondent;
 - iii) The tenancy deposit was not lodged with an approved scheme within the statutory period and no information on the deposit was provided to the Applicant by the Respondent in that time;
 - iv) The Respondent was in breach of Regulation 3 of the Regulations and
 - v) The late lodging of the deposit affected the repayment of the deposit to the Applicant.

Decision

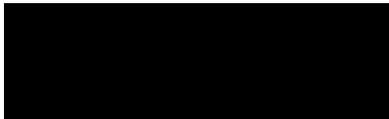
9. Having made those findings, the Tribunal had regard to Regulation 10(a) of the Regulations which states that, if satisfied that the landlord did not comply with any duty in Regulation 3 the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit.
10. The Tribunal considered the breach of Regulation 3 by the Respondent to be significant but not so significant to merit the maximum amount which could be awarded to the Applicant. The Tribunal had regard to the Application and to all of the

submissions both written and oral made by or on behalf of the Parties. The Tribunal accepted that the late lodging had been an oversight on the part of the Respondent. The Tribunal also accepted that the late lodging had had an adverse impact on the repayment of the deposit to the Applicant. In the circumstances, the Tribunal that consider an amount of £600.00 to be a reasonable award.

11. The Tribunal then had regard to Rule 17(4) of the Rules which states that the Tribunal “may do anything at a case management discussionincluding making a decision” and so proceeded to make an Order for Payment in the sum of £600.00.

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

21st March 2024

Date