



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011.

Chamber Ref: FTS/HPC/PR/23/1840

Re: Property at 40 Struan Drive, Inverkeithing, KY11 1AR (“the Property”)

Parties:

Miss Natalia Mania, 28 Primrose Avenue, Rosyth, KY11 2SS (“the Applicant”)

Mr Kristofer Richards, 13 Otterston Grove, Dalgety Bay, KY11 9PA (“the Respondent”)

Tribunal Members:

Lesley-Anne Mulholland (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make a Payment Order in the sum of £1,050 against the Respondent in favour of the Applicant.

Summary of Discussion

1. The Applicant is the former tenant of the property at 40 Struan Drive Inverkeithing KY11 1AR. (“the Property”). The Respondent is the owner and Landlord of the property. The Applicant seeks a Payment Order for the failure of the Respondent to pay a deposit into a safe deposit scheme. In a separate but related application under reference CV/23/1913, the applicant seeks return of the deposit.

2. A hearing took place remotely by Videolink on 1 March 2024. The Applicant and the Respondent were present. The applicant was represented by Miss Walker, Frontline Fife. The respondent represented himself.
3. The following facts were agreed at the hearing:
 - a. A meeting took place between the parties and the previous tenant on 7 January 2019. At the request of the respondent, it was agreed that the applicant would give the deposit of £525 directly to the former tenant.
 - b. The respondent held the deposit of the former tenant in his bank account. It was not placed into a safe deposit scheme.
 - c. The respondent failed to register the applicant's deposit in a safe deposit scheme.
 - d. The deposit was unprotected from 7 January 2019.
 - e. The applicant was not responsible or liable for the damage caused to the front door on 7 January 2019. The damage was caused by the removal company instructed by the former tenant.
 - f. Agreement was reached, before the commencement of the tenancy, that the applicant could paint the walls.
 - g. The respondent offered the applicant £400 in settlement of the claim in both applications. This was rejected by the applicant.
4. Having agreed these facts, the only outstanding matter to be determined was the amount of compensation to be awarded.
5. The deposit should have been paid into a safe deposit scheme within 30 days. The Respondent as Landlord should have been aware of his obligations and duties and the requirement to place the deposit into a safe deposit scheme. The Respondent would have had the deposit available to him from the start of the tenancy on 7 January 2019. The applicant asked that we award twice the deposit amount given the length of time the deposit has not been protected and because of the struggle she has had in trying to get her deposit back. She vacated the tenancy in 2023 and is still waiting on the return of the deposit.
6. In mitigation the Respondent accepted that he had not paid the deposit into a safe deposit scheme since 2019. He thought he was doing the former tenant a favour as her parents' home in Poland had been burned down and she required to return there immediately. The former tenant knew the applicant and it

seemed easier to ask the applicant to pay her deposit to the former tenant who needed the money quickly to pay for her passage to Poland. It was agreed that he would then use the former tenant's deposit, which he had held in his bank account, as the applicant's deposit and lodge it in a safe deposit scheme, which he failed to do.

7. Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 provides:

'(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy:

- (a) pay the deposit to the scheme administrator of an approved scheme; and
- (b) provide the tenant with the information required under regulation 42.'

8. Regulation 10 of the Tenancy Deposit Regulations provides:

'If satisfied that the landlord did not comply with any duty in regulation 3, the First-tier Tribunal:

(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and

(b) may, as the First-tier Tribunal considers appropriate in the circumstances of the application, order the landlord to

(i) pay the tenancy deposit to an approved scheme; or

(ii) provide the tenant with the information required under regulation 42.

9. Regulation 10 of the 2011 Regulations provides that where there has been a breach of Regulation 3 and Regulation 9 has been satisfied, the Tribunal must impose a sanction of up to three times the deposit paid by the Tenant.

10. Any award under Regulation 10 is required to reflect a sanction which is fair, proportionate and just given the circumstances (Jensen v Fappiano 2015 GWD 4-89). In Tenzin v Russell 2015 House. L.R. 11 it was held that any payment in terms of Regulation 10 is the subject of judicial discretion after careful consideration of all the circumstances.

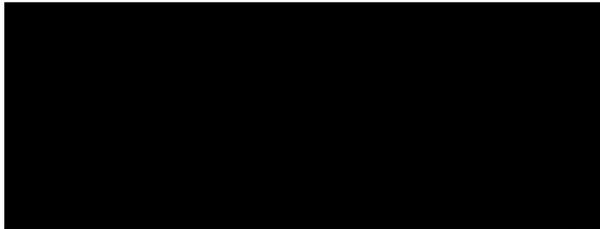
11. We have taken into account that the Applicant's deposit remained unprotected for a period of 4 years and the effort she has had to go to have the deposit returned. This is a serious breach. Taking everything into account, we decided the appropriate sanction to be the equivalent of 2 times the deposit.

Accordingly, the Respondent is sanctioned to make payment of compensation to the Applicant in the sum of £1,050,

Outcome

To make a Payment Order in the sum of £1,050 against the Respondent in favour of the Applicant.

NOTE: This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to tribunal members in relation to any future proceedings on unresolved issues.



1 March 2024

Legal Member/Chair

Date