



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

Chamber Ref: FTS/HPC/PR/23/2509

Re: Property at 88 Braeside, Keith, Moray, AB55 5AT (“the Property”)

Parties:

Miss Liza-Michelle Allan, 60 Scott Drive, Huntly, Aberdeenshire, AB54 8PF (“the Applicant”)

Mr Charles Pirie, Glack of Midthird, Keith, AB55 5JR (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the Respondent to the Applicant in the sum of £525.00.

Background

1. By application dated 27 July 2023 the Applicant applied to the Tribunal for an order under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The Applicant submitted a copy of her tenancy agreement together with a receipt for a deposit and a Notice to Leave in support of the application.
2. By Notice of Acceptance dated 31 July 2023 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.
3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 9 August 2023.

4. A CMD was held by teleconference on 7 December 2023. The Applicant did not attend. The Tribunal clerk contacted the Applicant by telephone and was advised that she had a poor signal and was unable to dial in to the call. The Respondent and his wife attended and was represented by Ms Sonya Hayward from Moray CAB. In light of the Applicant's non-attendance and that an application under Reference FTS/HPC/CV/23/3643 was due to call at a CMD the Tribunal adjourned the application to a further CMD and conjoined the cases.

The Case Management Discussion

5. A CMD was held by teleconference on 4 April 2024. Once again the Applicant did not attend. In a telephone call to the tribunal clerk she explained she was at work and unable to attend but in any event had nothing to add to her written representations. The Applicant attended along with his wife and was represented by Ms Hayward.
6. The Tribunal noted that it was accepted that the Applicant commenced a Private Residential Tenancy of the property on 31 July 2019 and had paid a deposit of £350.00 to the Respondent at the commencement of the tenancy.
7. The Tribunal noted that it was also accepted that the deposit had never been paid by the Applicant into a Tenancy Deposit Scheme. The Tribunal was also advised by Ms Hayward that the tenancy ended on 7 July 2023 and that as the Application to the Tribunal had been made on 27 July 2023 it was accepted that the application was timeous.
8. Ms Hayward also agreed that in terms of Regulation 10 of the 2011 Regulations the Tribunal had to order the Respondent to pay the Applicant an amount not exceeding three times the deposit.
9. The Tribunal noted that although the Respondent had let the property in the past to other tenants, he had never placed their deposits in an approved scheme. Ms Hayward said that the Respondent had been unaware of his obligations in this regard. Ms Hayward went on to say that the Respondent had no other rental properties and the property had now been sold and the Respondent was no longer a landlord.
10. Ms Hayward confirmed that the Applicant was content that the Tribunal make a final decision without the need for a hearing.

Findings in Fact

11. The parties entered into a Private Residential Tenancy Agreement that commenced on 31 July 2019.
12. The Applicant paid a deposit of £350.00 to the Applicant at the commencement of the tenancy.

13. The Respondent failed to lodge the Applicant's deposit in an approved scheme in accordance with Regulation 3 of the 2011 Regulations.
14. The Tenancy ended on 7 July 2023.
15. The Applicant applied to the Tribunal under Regulation 9 of the 2011 Regulations on 27 July 2023.
16. The application is timeous.
17. The Respondent has no other rental properties.
18. The Respondent has sold the property.
19. The Respondent has previously retained tenants' deposits and not lodged them in an approved scheme.

Reasons for Decision

20. It was not disputed that the Respondent was in breach of Regulation 3 of the 2011 Regulations and that the application was timeous. 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. 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. It was held that any payment in terms of Regulation 10 is the subject of judicial discretion after careful consideration of all the circumstances.
21. The Tribunal 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. Furthermore, the Respondent has admitted that he has never placed previous tenants' deposits in an approved scheme. This is a serious breach. However, the Tribunal acknowledges that the property has now been sold and the Respondent is no longer a landlord and therefore in the circumstances considers that an award of one and a half times the deposit is an appropriate sanction to impose. The Tribunal shall therefore award the Applicant the sum of £525.00.

Decision

- 22 The Tribunal finds the Applicant entitled to an order for payment by the Respondent to the Applicant in the sum of £525.00.

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.



**Graham Harding
Legal Member/Chair**

**4 April 2024
Date**