



Decision with Statement of Reasons 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/23/4659

Re: Property at 5 Panmure Street, Broughty Ferry, Dundee, DD5 2ER (“the Property”)

Parties:

Mrs Margaret Ann Jordan, Denpark Lodge, 84 Chestnut Drive, Seaton Estate, Arbroath, DD11 5FL (“the Applicant”)

Mrs Alison Wiseman, Balnuith Farmhouse, Balnuith Farm, Tealing, Angus, DD4 0RE (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member)

1. Decision

The Tribunal decided that the Respondent had failed to comply with any duty contained in Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the regulations”) and orders the Respondent to pay a penalty of fourteen hundred pounds (£1400).

2. This was a case management discussion (‘CMD’) in connection with an application made in terms of regulation 9 of the regulation and rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (‘the rules’). The Applicant and the Respondent both attended.

3. Matters Agreed

The parties entered into a tenancy agreement in November 2017 for let of the property. The Applicant paid a deposit of £500. The deposit was not put into a deposit scheme. The tenancy came to an end no earlier than 30 September 2023. The deposit was returned to the Applicant in full around November 2023. The Applicant replaced some

of the blinds in the property and the Respondent obtained a quote for £280 to reinstate them. The Respondent proposed to deduct this sum from the deposit at the end of the tenancy but the Applicant refused.

4. The Applicant's position

The deposit was not placed in a deposit scheme and at the end of the tenancy the Respondent initially refused to return the full deposit because of blinds which the Applicant removed and replaced with curtains. The blinds were grubby when the Applicant took entry to the property and the Applicant replaced them. The Applicant replaced carpets and other items in the property at her own expense over the course of the tenancy. The Respondent has multiple properties and she should be aware of her obligation to lodge the deposit in an approved scheme. The deposit was unprotected for the full term of the tenancy, a period of 6 years.

5. The Respondent's position

The Respondent has been a registered landlord since 1997 and has around 13 properties which she rents out. This is the first time a tenant has ever taken an application of this type to the Tribunal. The Applicant was aware of her obligations in terms of the regulations but she has always placed the deposit in a separate bank account rather than lodging with an approved scheme and there has never been a difficulty. Since this application was made, all of her deposits have been lodged in a deposit scheme. At the end of this tenancy, the Respondent held onto the deposit until she got a quote for the replacement of the blinds. The curtains the Applicant left were of poor quality. When it became clear the Applicant would not accept a deduction from the deposit, she returned it in full. Part of the delay in the return of the deposit was on the Respondent waiting on the Applicant to give her bank details.

6. Findings in fact

- The Respondent is the owner and registered landlord of the property.
- The Respondent rents out around 13 properties.
- The Respondent has never used the deposit scheme for any of her properties prior to this application being made.
- The parties entered into an agreement for let of the property in November 2017.
- The Applicant paid a deposit of £500.
- The deposit was never lodged in a deposit scheme.
- The tenancy came to an end around 30 September 2023.
- The Respondent initially intended to deduct the sum of £280 from the deposit to replace blinds in the property which had been removed by the Applicant as they were dirty when she took entry to the property.
- The deposit was returned to the Applicant in November 2023.

7. Reasons

This was a clear and unequivocal breach of the regulations. It was difficult for the Tribunal to find any mitigating factors regarding the breach as it was wilful. The

Respondent was aware of her responsibilities as a landlord to ensure tenancy deposits are lodged an appropriate scheme. She has been a landlord since 1997 and rents around 13 properties. The scheme came into force in 2011 and it is only as a result of this application that she has lodged the deposits for her other properties. Further, when the tenancy came to an end and a dispute arose, the Respondent initially retained the deposit so she could obtain a quote for the replacement of blinds. There was clearly a factual dispute regarding the blinds and one of the purposes of the regulations is to prevent landlords from having the upper hand at the end of a tenancy by holding the deposit. The one matter in mitigation was that the Respondent eventually returned the deposit in full when agreement could not be reached.

Turning to the amount of the penalty, I have reviewed the case law and in particular, the decision of Sheriff Jamieson in the case of Kirk-v Singh 2015 SLT (Sh Ct) 111 where the sanction should be fair proportionate and just having regard to the seriousness of the non compliance. This is a clear and wilful breach by an experienced landlord. The maximum penalty is three times the deposit, namely £1500. The small factor in mitigation is the fact the deposit was returned in full. I consider that a penalty of £1400 is fair proportionate and just in all of the circumstances.

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.

Lesley Anne Ward

7 May 2024

Legal Member

Date

