



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 (“the 2011 Regulations”)

Chamber Ref: FTS/HPC/PR/24/0533

Re: Property at 20 Lesmurdie Court, Elgin, IV30 4JL (“the Property”)

Parties:

Ms Dorota Ofat, 22 Hazel Court, Elgin, IV30 4BD (“the Applicant”)

Miss Kerrie Wilson, 49 Mayne Road, Elgin, IV30 1PF (“the Respondent”)

Tribunal Members:

Alastair Houston (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of £575.00 be made in favour of the Applicant.

1. Background

1.1 This is an application under rule 103 of the Chamber Rules whereby the Applicant seeks payment of £1725.00 being three times the tenancy deposit due to an alleged failure on the part of the Respondent to lodge the deposit with an approved scheme. The application was accompanied by copies of the written tenancy agreement between the parties and a letter from the Letting Protection Service Scotland

1.2 Both parties had lodged further written representations in advance of the Case Management Discussion.

2. The Case Management Discussion

2.1 The Case Management Discussion took place on 26 April 2024 by teleconference. The Applicant was represented by Ms Cousins of Nairn Citizens Advice Bureau and was personally present. The Respondent was

personally present. An interpreter was also present for the benefit of the Applicant.

2.2 Ms Cousins confirmed that the tenancy agreement between the parties commenced in November 2019. A deposit of £575.00 was paid at that time. This was only lodged with the Letting Protection Service Scotland on 8 August 2022. No evidence had been provided of where it was held prior to that date. The Applicant had agreed to the deposit being retained by the Respondent at the end of the tenancy agreement. The Applicant had not known the relevant regulations in respect of the deposit had been breached until she had received advice from her representatives. Three times the deposit was sought.

2.3 Ms Wilson confirmed that the tenancy agreement commenced in November 2019 and ended in December 2023. The deposit was lodged with the Letting Protection Service Scotland as per the letter accompanying the application. Prior to that, it had been held in a separate bank account. She had been unaware of the regulations prior to becoming a member of the Scottish Association of Landlords when seeking advice in relation to the tenancy between the parties. She had carried out some research prior to becoming a landlord but had made a genuine mistake in relation to the deposit and had lodged it when becoming aware. This was the only property she made available to rent. She had acted as a landlord for around two and a half years prior to the tenancy commencing. During the tenancy, she also worked as a mortgage advisor and provided administrative support to her ex-partner's business ventures. The dispute with the Applicant was having a detrimental effect on her health and she wished it brought to an end.

2.4 Ms Cousins indicated that she did not take issue with anything factual said by the Respondent. The Tribunal indicated that a hearing did not require to be fixed in respect of the application. A decision that the Respondent ought to make payment of £575.00 was made.

3. Reasons For Decision

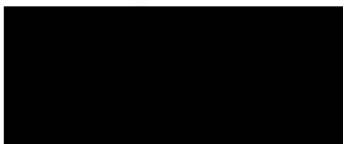
3.1 There was little in the way of factual dispute between the parties. The tenancy had commenced in November 2019 and had continued until December 2023. A deposit of £575.00 had been paid to the Respondent by the Applicant. This ought to have been lodged with an approved scheme within 30 working days of the commencement of the tenancy in terms of regulation 3 of the 2011 Regulations. This was not done. The deposit was not lodged with an approved scheme until August 2022.

3.2 Accordingly, there was a breach of the 2011 Regulations on the part of the Respondent. In terms of regulation 10 of the 2011 Regulations, the Tribunal must order the Respondent to pay the Applicant a sum not exceeding three times the amount of the deposit.

- 3.3 The Tribunal considered it had discretion to fix what it deemed to be an appropriate sum in the whole circumstances of the case. Much of the parties' written representations contained allegations of other breaches of the agreement between them. The Tribunal did not consider these to be particularly relevant, with each party having the ability to air them before the Tribunal through separate civil proceedings applications, if necessary.
- 3.4 The Tribunal considered that the most relevant circumstances were the severity of the breach on the part of the Respondent and the circumstances in which it occurred. It was noted that this was the sole property in respect of which the Respondent acted as landlord. It was not her main vocation. She had taken the appropriate steps to lodge the deposit with an approved scheme when becoming aware of her duty to do so. The Tribunal also considered that the deposit had gone unprotected for a significant period of time. The Respondent ought to have made herself aware of all duties incumbent upon her before becoming a landlord. The Tribunal accepted that the deposit was held within a bank account and that no dispute had arisen between the parties as to its return to the Applicant at the end of the tenancy. Accordingly, a sum equivalent to that of the deposit was the appropriate figure to be paid to the Applicant.

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

26 April 2024
Date