



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section under regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/20/0434

Re: Property at 100 Castle Heather Drive, Inverness IV2 4ED (“the Property”)

Parties:

Veronica Craig, residing at 19 Templand Road, Lhanbryde IV30 8PP (“the Applicant”)

And

Marion MacInnes, residing at 18 Slackbuie Way, Inverness, IV2 6AT (“the Respondent”)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has breached her obligations under regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Background

1. In September 2016 the respondent let to the applicant the property at 100 Castle Heather Drive, Inverness. A Tenancy agreement was entered into which required payment of a deposit of £650. The tenancy ended on 22 February 2020.

The Case Management Discussion

2. A Case Management Discussion took place before the Tribunal by telephone conference at 10.00am on 6 August 2020. The Applicant was not present, but she was represented by her daughter, Maria Craig. The respondent was neither present nor represented. The respondent has received notice of the hearing. She submitted written representations on 30 June 2020. I am satisfied that I can justly determine this case in the respondent’s absence.

3. The respondent's position is that this was the first time she had rented out a property, and she did so without taking any advice. Although the respondent took a deposit from the applicant, she knew nothing of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("The 2011 Regulations"). She preserved the deposit in an account in her own name. When the respondent realised her mistake, she lodged the deposit with Letting Protection Scotland ("LPS"). After the tenancy ended LPS adjudicated and the deposit was divided between the parties.

4. The applicant says that she could not trace the deposit because, although it had eventually been lodged with LPS, an incorrect address had been given to LPS by the respondent so that there was a delay in tracing the deposit. In any event the deposit was unprotected for many months.

5. Both parties agree that the deposit was not lodged with an approved tenancy deposit scheme within 30 days of commencement of the tenancy. Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 tells me that, in light of that admitted fact, I must make a payment order against the respondent. I can dispose of this case today, without the need for a further hearing.

Findings in Fact

6. In September 2016 the respondent agreed to let the dwelling-house at 100 Castle Heather Drive, Inverness, to the applicant. A tenancy agreement was entered into setting out the agreed rental and requiring a deposit of £650. The tenancy agreement narrated that the deposit would be paid into an approved tenancy deposit scheme within 30 days of commencement of the lease. The respondent had the advice of solicitors at the time the tenancy agreement was entered into.

7. Before taking entry the Applicant paid a deposit payment of £650 to the respondent. The respondent placed that money in an account in her name alone. Parties' agreed to end the tenancy on 22 February 2020. The respondent only paid the deposit into an approved tenancy deposit scheme (LPS) after holding the deposit funds in her own name for many months. At the termination of the tenancy the parties could not agree on the amount of deposit which should be repaid to the tenant, but they accepted LPS's adjudication on their dispute.

8. When the deposit was placed with LPS the respondent inadvertently provided LPS with the wrong address. LPS held the funds believing them to be for a tenancy at 100 Castle Heather Road, when they were for a tenancy at 100 Castle Heather Drive. That error made it difficult for the applicant to trace the deposit funds.

9. The respondent had no intention of depriving the applicant of repayment, but ignored the terms of the lease she signed as landlady which (correctly) narrated that the deposit would be placed in an approved scheme within 30 days of the commencement of the tenancy. LPS have already determined the division of the deposit between the parties.

Reasons for Decision

10. It is beyond dispute that a deposit of £650 was paid at the commencement of the tenancy. On the facts as I find them to be, the deposit was not paid into an approved scheme when it should have been, and rested for many months in the respondent's name alone.

11. This may have been the respondent's first experience as a landlady, but she had the advice of a solicitor and the lease she signed as landlady reiterated the requirement to place deposits in an approved scheme with 30 days.

12. The respondent acknowledges her error. The respondent has no history of breaches of the 2011 Regulations. A full accounting for the deposit has been made. Against those mitigating factors I must balance the undisputed fact that the deposit was unprotected for many months.

13. The Applicant asked me to make a payment order. The purpose of the order is not to enrich the applicant. The purpose of the order is to punish the respondent; to mark society's displeasure; to protect society and to ensure the enforcement of the 2011 Regulations in the future. Although the respondent clearly took steps to protect the deposit and refund the applicant she only did so after the deposit had rested in her name alone for many months, despite the terms of the lease the respondent presented to the applicant to sign (and which the respondent herself signed) which narrates the requirements of the 2011 Regulations.

14. The amount of deposit was £650.00. For many months the deposit was not protected. A payment order equivalent to the value of the deposit reflects the seriousness of the breach of the 2011 Regulations.

15. The appropriate level of payment order is £650.00

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment to the Applicant of Six Hundred and Fifty pounds (£650.00) within 14 days of service of this order.

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.

Paul Doyle

Legal Member

6 August 2020