

Housing and Property Chamber
First-tier Tribunal for Scotland



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 (Regulations)

Chamber Ref: FTS/HPC/PR/19/1254

Re: Property at 4 Auckland Place, Dalmuir, Clydebank, G81 4JZ (“the Property”)

Parties:

Ms Caroline Jones, 4 Auckland Place, Dalmuir, Clydebank, G81 4JZ (“the Applicant”)

Ms Lyndsey Cox, 10 Moore Drive, Bearsden, Glasgow, G61 2QY (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:

- (1) the Respondent pay to the Applicant the sum of £750; and**
- (2) the Respondent protect the deposit within an approved scheme within 7 days of the date of this Order.**

Background

This is an application under Regulation 9 of the Regulations and Rule 103 of the Tribunal Procedure Rules.

The Tribunal had regard to the following documents:

1. Application received 25 April 2019;
2. Short Assured Tenancy dated 1 May 2017;
3. Texts between the Parties;
4. Written Submissions from the Respondent dated 20 June 2019.

Case Management Discussion (CMD)

The case called for a CMD on 3 July 2019. The Applicant was present as was the Respondent.

The Respondent's position was that she was an inexperienced landlord (this was the only property she rented out), was unaware of the requirement to protect the deposit and hadn't yet sought to protect it given that notice had been given to the Applicant to leave the Property around 24 May 2019. The Applicant remained in the Property.

The Applicant informed the Tribunal that she had secured another Property and was vacating in a few weeks subject to agreement with the Respondent.

The original deposit had been paid some 6 years ago. The tenancy dated 1 May 2017 was the latest tenancy.

So far as material the Tribunal made the following findings in fact:

1. The Parties have let the Property for 6 years;
2. At the commencement of the tenancy the Applicant paid a deposit of £600 to the Respondent;
3. The latest tenancy agreement was entered in to on 1 May 2017;
4. The Respondent has not to date protected the deposit;
5. The Respondent is an inexperienced landlord and was unaware of the requirement to protect the deposit.

The Tribunal then considered what award (if any) to make in respect of the admitted failure to protect the deposit. In so doing it considered the approach in ***Russell-Smith and Others v Uchegbu [2016] SC EDIN 64***. The Tribunal considered what was a fair, proportionate and just sanction in the particular circumstances of this case. The Tribunal had regard to the purpose of the Regulations and the gravity of the breach. In the end of the day this was an exercise of the Tribunal's judicial discretion.

The Tribunal weighed all the factors and found it of significance that the deposit had been unprotected for 6 years and remained unprotected; that the Respondent was an inexperienced landlord and was unaware of the requirements of the Regulations. Furthermore, the Applicant had not been prejudiced.

The Tribunal accordingly found the breach at the lower end of the scale and ordered the Respondent to pay the Applicant the sum of £750 in respect of the breach.

In light of the fact that the deposit remained unprotected the Tribunal also ordered the Respondent to protect the deposit within an approved scheme within 7 days and advised that it would issue a Direction that the Respondent produce proof of the protection of the deposit to the Tribunal within 14 days.

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

3 July 2017

Date