

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**

Chamber Ref: FTS/HPC/PR/19/1630

**Re: Property at Flat 1, Inchbae Lodge, Garve, Highland, IV23 2PG ("the
Property")**

Parties:

**Ms Debby Ross, 1/2 Conordon, Braes, Portree, Isle of Skye, IV51 9QH ("the
Applicant")**

**Mrs Rita Bishop, Bryony, Inchbae, Garve, Ross-shire, IV23 2PG ("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 £500.00.**

Background

1. By application dated 22 May 2019 the Applicant complained to the Tribunal that the Respondent had failed to lodge her deposit of one month's rent of £500.00 in an approved tenancy deposit scheme in accordance with the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations").
2. The Applicant provided the Tribunal with a copy of the tenancy agreement and email correspondence between the parties and photographs in support of her application.

3. By Notice of Acceptance dated 25 July 2019 a legal member of the Tribunal with delegated powers accepted the application and a case management discussion was assigned.

Case Management Discussion

4. A case management discussion was held at Inverness on 10 September 2019. The Respondent appeared personally. The Applicant was unable to attend but had confirmed in advance that she was content for the discussion to take place in her absence and was aware that a final decision could be made.
5. The Respondent accepted that the Tenancy had been a private residential tenancy made under the Private Housing (Tenancies)(Scotland) Act 2016 and that any reference in the tenancy documentation supplied to the Applicant at the commencement of the tenancy to it being a Short Assured Tenancy had been irrelevant.
6. The Respondent also accepted that any issues with regards to the period of notice required to be given by the Applicant on termination of the tenancy was also irrelevant to the current application as were any issues regarding the state of the property at the end of the tenancy.
7. The Respondent confirmed that she was aware of the requirements of the 2011 Regulations but did not consider that by operating a rolling two month payment of rent in advance she was holding a tenant's deposit.
8. The Tribunal explained to the Respondent the purpose of the case management discussion was to ascertain the issues and what facts were agreed and which were in dispute and thereafter to determine further procedure. The Respondent confirmed that it appeared that the issue in dispute was whether or not the additional month's rent paid at the commencement of the tenancy ought to have been lodged in a tenancy deposit scheme. The Respondent confirmed that in the circumstances she was content for the Tribunal to determine the matter at the case management discussion and that it would not be necessary for an evidential hearing to be fixed.
9. The Tribunal referred the Respondent to page 1 of the tenancy agreement and to the clause headed DEPOSIT. The Respondent confirmed she had inserted the words "None, but 2 months' rent, first payment of £1000.00" had been inserted by her in front of the remainder of that clause. She agreed that it therefore appeared that this amount would be lodged in a tenancy deposit scheme. The Respondent said that this had never been her intention and that she might have "shot herself in the foot",
10. The Tribunal referred the Respondent to the definition of a Tenancy Deposit as contained in the Housing Scotland Act 2006 at Section 120(1). The Tribunal queried whether it was the case that the additional month's rent held

by the Respondent was not in fact being held as security for rent not being paid on a tenant leaving the property. The Respondent acknowledged that this was the intention of the rolling two months' rent but did not accept it was a deposit.

11. The Respondent confirmed that the property in question was now let out as a holiday let and that she had one other rented property. She had been a landlord for about six years.

Findings in Fact

12. The parties entered into a Private Residential Tenancy Agreement that commenced on 1 November 2018 at a monthly rent of £500.00.
13. The Applicant paid two months' rent in advance at the commencement of the tenancy in November 2018.
14. The Applicant paid a further month's rent at the beginning of December and monthly thereafter during the tenancy until the beginning of March 2018.
15. The Applicant left the property on 10 April 2019. The tenancy terminated on 28 April 2019.
16. The Respondent retained £500.00 of the Applicant's money during the tenancy as security for the performance of the Applicant's obligation to pay rent during the period of the tenancy.
17. The Respondent obliged herself to in terms of the tenancy agreement entered into between the parties to lodge the Applicant's two months' rent in a tenancy deposit scheme.

Reasons for Decision

18. Although the Respondent did not intend to lodge any of the initial two month's rent paid by the Applicant in a tenancy deposit scheme she did by inserting the handwritten note at the commencement of the deposit clause in the tenancy agreement appear to anyone giving the clause its normal meaning to be doing just that. It was therefore an uninduced error on the part of the Respondent for which she alone is responsible.
19. It was clear from the Respondent's written submissions and from what she said at the case management discussion that she had previously encountered difficulties with tenants either causing damage to her property or leaving without paying rent. The Respondent considered that by setting up a rolling two months payment of rent in advance she was not thereby holding the Applicant's money as security for performance of an obligation. However the Tenancy Agreement states that the rent is £500.00 per month payable on the 1st day of each month. It does not make any provision for two months' rent being paid in advance. The tribunal was therefore satisfied that the

Respondent was holding the Applicant's money as a tenancy deposit even if that had not been the intention.

20. As the Respondent was holding a deposit she was obliged in terms of Regulation 3 of the 2011 Regulations to pay the deposit into an approved scheme within 30 working days. She did not do so and is therefore in breach of the 2011 Regulations.
21. As the Respondent is in breach of the 2011 Regulations the Tribunal must order the Respondent in terms of Regulation 10(1) of the 2011 Regulations to pay the Applicant an amount up to three times the deposit. The tribunal was satisfied from the evidence before it that the deposit was only one month's rent namely £500.00.
22. The Tribunal has some discretion with regards to the level of sanction to be made against the Respondent in order to reflect the severity of the breach. In this case the Tribunal has acknowledged that the Respondent did not consider that she had taken a deposit. The period of the tenancy was just under six months during five of which the Applicant's funds were unprotected. The property in question is no longer being let under a residential tenancy. Taking all of these factors into account the Tribunal is of the view that whilst the breach of the 2011 Regulations is serious it is nonetheless at the lower end of the scale and that an award of one times the deposit namely £500.00 would be an appropriate sanction in this case.

Decision

23. The tribunal finds the Applicant entitled to a payment by the Respondent in the sum of £500.00.

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

10 September 2019

Legal Member/Chair 

Date 