

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/PR/20/0992

**Re: Property at 5 Signal Station, Battery Road, North Queensferry, Fife, KY11
1JU (“the Property”)**

Parties:

Ms Ana Moreno, 71 Priory Lane, Dunfermline, Fife, KY12 7DT (“the Applicant”)

**Miss Gillian Martin, 3 Signal Station, Battery Road, North Queensferry, Fife,
KY11 1JU (“the Respondent”)**

Tribunal Members:

Virgil Crawford (Legal Member)

Decision (in absence of the Respondent)

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

Background

- 1 On 1 May 2016 the Parties entered in to a lease in relation to the property;
- 2 The tenancy ended on 31 April 2020;
- 3 A tenancy deposit of £450 was paid by the Applicant to the Respondent. This was acknowledged by the Respondent by letter dated 6 April 2016;
- 4 The deposit funds were not lodged with an approved tenancy deposit scheme until 3 December 2019. Thereafter, following the termination of the tenancy, the deposit funds were returned, in full, to the Applicant;
- 5 The Applicant presented an application to the Tribunal on 18 March 2020;

The Case Management Discussion

- 6 The case Management Discussion was conducted by teleconference. The Applicant did not participate personally but was represented by Mr Runciman of Messrs Gilson Gray LLP, Edinburgh. The Applicant did participate. Her partner was present with her as a supporter;
- 7 The factual background was a matter of agreement, that being that a deposit of £450 had been paid prior to the start of the tenancy and had not been lodged with an approved scheme until December 2020;
- 8 The Applicant made the following points:-
 - a) The breach persisted for a significant period of time, being for more than 3 years;

- b) The function of the Tribunal was to impose a sanction for non compliance and there had been clear non compliance;
 - c) There is an authority which suggests that it is of no relevance whether the non compliance was due to malice or naivety;
 - d) The respondent had been a landlord for many years;
 - e) The Respondent lets a number of properties;
- 9 The Respondent made the following points:-
- a) She has been letting out properties for the past 20 years, and had been doing so for another 15 years before then with her father,
 - b) In total she has had 5 properties she has let, those being a row of 5 cottages of which this Property formed part,
 - c) There has not been a high turnover of tenants;
 - d) She was unaware of the change in the legislation which required her to lodge a deposit with an approved scheme;
 - e) The deposit funds had always been available, having been retained in a bank account for that purpose;
 - f) When she became aware of the problem, which was when the Applicant spoke to her about return of the deposit, she immediately lodged it with an approved scheme;
 - g) The deposit was subsequently returned, in full, to the Applicant, no claim being made on it by the Respondent;

Findings in Fact

- 10 The Tribunal found the following facts to be agreed or established:-
- a) On 1 May 2016 the Parties entered in to a lease in relation to the property;
 - b) The tenancy ended on 31 April 2020;
 - c) A tenancy deposit of £450 was paid by the Applicant to the Respondent. This was acknowledged by the Respondent by letter dated 6 April 2016;
 - d) The deposit funds were not lodged with an approved tenancy deposit scheme until 3 December 2019. Thereafter, following the termination of the tenancy, the deposit funds were returned, in full, to the Applicant;
 - e) The Applicant presented an application to the Tribunal on 18 March 2020;

Reasons for Decision

- 11 It was not in dispute that there had been a breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the TDS Regs”). That being so, the Tribunal required to determine the sanction to be imposed. For the reasons stated above, Mr Runciman moved that the maximum sanction of three times the amount of the deposit be ordered;
- 12 The Tribunal did not accede to that motion and instead ordered payment of £675.00, being one and a half times the amount of the deposit. It did so for the following reasons:-

- a) While the deposit had not been lodged with an approved scheme for a significant period of time, it was always available and was lodged when the Respondent became aware of the failure;
 - b) The deposit was returned to the Applicant, in full, following the end of the tenancy;
 - c) While ignorance of the law is no defence to a failure to comply with the TDS Regs, the fact that the failure appears to have arisen from such ignorance, rather than a deliberate intention to ignore the regulations or deceive the Applicant is relevant in determining the level of sanction;
 - d) While the Respondent has been a landlord for many years, her experience is limited in terms of the number of properties let and the number of leases issued, her letting experience being confined to a row of 5 properties which have been let since before the TDS Regs were enacted;
 - e) In the circumstances, while assessing that there has been a clear breach of the TDS Regs, and while accepting that the breach is not at the lowest end of any scale of such breaches, the Tribunal did not consider that it was at the top end either;
- 13 The Respondent sought time to pay. While not disclosing her financial position in full, she did indicate that she was working to a tight financial budget. The Applicant had indicated that if time to pay was to be allowed there would be no objection if the amount ordered was to be paid within 6 months. In the circumstances, the Tribunal ordered payment at £115.00 per calendar month.

Decision

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.

Virgil Crawford

17/08/2020

Legal Member/Chair

Date