

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 Section 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/19/2155

Re: Property at 11 McAllister Avenue, Airdrie, ML6 7DF (“the Property”)

Parties:

Ms Lorraine Dalziel, 62 Glenhove Road, Cumbernauld, Glasgow, G67 2JZ (“the Applicant”)

Mr David Newton, Mrs Angela Newton, 6 McAllister Avenue, Airdrie, ML6 7DF (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent did not comply with the duty in Regulation 3 to pay the deposit to the scheme administrator of an approved scheme and ordered the Respondent to pay the Applicant the sum of one thousand three hundred and seventy five pounds (£1,375) being two and half times the amount of the tenancy deposit.

- **Background**

This was a Case Management Discussion (CMD) to consider an application under Rule 103 for an order under Section 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (2011 Regulations). The Application was made on 4th July 2019 and is timeously made in terms of the Regulations.

The Applicant had paid the Respondent £550 in cash for the deposit and is claiming a penalty for failure to lodge the deposit in an approved scheme.

Intimation of the CMD was made on the Respondent by letter dated 18th September indicating the date, time and place of the CMD. The Respondent submitted a written

response on 30th September and indicated they would not be attending the CMD in person as "it would cost them more money having to take a day off work to attend. They then indicated that they would "await the decision."

In their written submissions the Respondent's confirm that the Applicant wanted in the property quickly They advise further that "Angela told her that we had not yet registered with the landlord scheme and that we were about to look into it further but she just said that she wanted to pay the deposit immediately as she was afraid to lose the property and needed to move ASAP. Ms Dalziel had informed us this is how she had done it before with her previous rental which led us to believe it was not necessary to use the deposit scheme."

The Respondents then go on to describe various alleged breaches by the Applicant of the tenancy agreement and alleged damage to the Property which they state was only visible after she left. They go on to confirm that in those circumstances they thought it was not "unreasonable for Mrs Dalziel to contribute a small amount from her security deposit towards the damages caused by her"

Mrs Dalziel submitted along with her application copies of text messages showing that she indicated her intention to leave on 30th June 2019 and copies of an e-mail from Angela the second Respondent dated 8th July 2019 replying to an email asking about the deposit which states "If you wish to go ahead with a tribunal it is probably best if we hold the entire deposit until then as previously stated All we want is for you to agree to contribute to a small amount (£150) to replace the lights and handles.

The Case Management Discussion

The Applicant attended the CMD with Mr McNaught as a supporter. The Respondent as indicated in their letter did not attend nor were they represented.

The Tribunal confirmed with the Applicant that the dates on the tenancy agreement provided with the Respondent showing that the lease started on 30th August 2014 was correct which the Applicant confirmed. She also confirmed the deposit had been £550 and that she had paid it in cash. She advised that when she heard from the Respondent that they would return her deposit in 14 days she approached a letting agent to see if they were allowed to wait that length of time. She was advised that the deposit should have been in a tenancy deposit scheme and did she have the registration number. The Applicant confirmed that this was the first she knew about a scheme and further advised she then contacted Shelter for further advice. They advised her of her right to take the case to the First-tier Tribunal for Scotland (Housing and Property Chamber) and when the Respondents did not refund her whole deposit the Applicant made this application.

The Applicant further advised that the Respondents have now paid part of her deposit back namely £400 leaving £150 outstanding. The Applicant confirmed she is now aware that she has to raise a separate application for the return of that part of the deposit and the Legal Member advised that this CMD is to discuss and decide on whether there are any facts in dispute, whether a hearing is required and if not to determine what penalty should be applied for the failure to lodge the deposit in an approved scheme.

FACTS

1. The Respondent entered into a lease with the Applicant whereby the Applicant leased the Property from the Respondent from 30TH August 2014
2. The rent due was £550 per month.
3. The deposit paid by the Applicant to the Respondent was £550.
4. The tenancy continued from 30th August 2014 until 30th June 2019 when the Applicant quit having given 2 months' notice.
5. The Applicant was not at any time given information about where her deposit had been placed.
6. The Applicant raised an application for payment of an order under Rule 9 of the Regulations on 4th July 2019.
7. The Deposit was not placed in an approved scheme.
8. Part of the deposit has been returned to the Applicant namely £400 the rest having been kept by the Respondent as compensation for an alleged breach of tenancy.

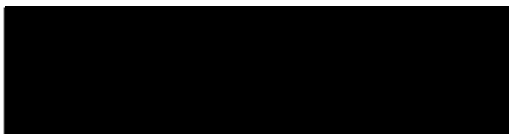
REASONS

- The Tribunal found that the Respondent has failed to comply with the duty set out in Section 3 of the 2011 Regulations by failing to place the deposit in an approved scheme within 30 days of the beginning of the tenancy.
- That in terms of Section 10 of the 2011 Regulations the Tribunal is obliged to make an order that the landlord pay the tenant an amount not exceeding three times the amount of the tenancy deposit.
- The Tribunal considered that there was no dispute over the facts as both parties agree, which is confirmed in the written submissions and written evidence, that the deposit was retained by the Respondents and that they are continuing to withhold £150 for compensation for damage the allege the Applicant has caused to the Property.
- The Tribunal considered whether or not it was necessary to hold a hearing to determine the penalty but as one of the overriding objectives is to avoid delay, that given the Respondents had full notice of the CMD had submitted written representations and had indicated they would not be attending the CMD but that they awaited the decision the Tribunal felt it was appropriate to make an order at the CMD which it can do so in terms of Rule 17 of the Tribunal Rules.
- The Tribunal considered that the Respondent may have overlooked the need to lodge the deposit initially due to letting the Property more quickly than they may have expected to, but all landlords are required to comply with the legislation and to know their responsibilities. A responsible landlord should know that all deposits require to be lodged in an authorised scheme. The Respondents have failed to lodge the deposit in such a scheme for nearly 5 years which is a very lengthy period of time.

- The Respondent has only returned part of the deposit claiming repayment for sums they claim are due. The purpose of lodging a deposit in an approved scheme is to allow both parties the protection of having any dispute over the return of the deposit adjudicated by the scheme administrators who act in an objective way. The tenant has been deprived of this facility and disagrees with the deductions made.
- Given the length of time the deposit has been left unprotected and the fact the Respondent has unilaterally decided on how much should be returned to the Tenant the Tribunal considers the amount of two and half times the deposit as reasonable and appropriate.

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

22nd October 2019

Date