



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Regulation 10 of the Tenancy Deposit
Schemes (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/19/3799

Re: Property at 20 Ashie Road, Lochardil, Inverness, IV2 4EN (“the Property”)

Parties:

Miss Stephanie Bain, Morayston House, Dalcross, Inverness, IV2 7JQ (“the Applicant”)

L A , 8 Lochardil Place, Inverness, IV2 4LN (“the Respondent”)

Tribunal Members:

Helen Forbes (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted in favour of the Applicant in the sum of £750.

Background

1. An application was lodged by the Applicant in the period between 26th November and 18th December 2019 under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”).
2. Parties had entered into a tenancy agreement in respect of the Property, commencing on 25th August 2018 and ending on 20th November 2019. The Applicant paid a deposit of £750 to the Respondent at the commencement of the tenancy. The Applicant discovered at the end of the tenancy that the deposit had not been lodged with an approved tenancy deposit scheme. The Applicant was seeking an award of up to three times the deposit in terms of Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”). The Applicant lodged a copy of the tenancy agreement, text messages between the parties, and confirmation that the deposit had not been placed in any of the tenancy deposit schemes.

3. By email dated 14th January 2020, the Respondent lodged written representations.
4. By email dated 15th January 2020, the Applicant lodged written representations, text messages between the parties, a photograph of the kitchen of the Property, and information from My Deposit Scotland.

The Case Management Discussion

5. A Case Management Discussion ("CMD") took place on 28th January 2020 at Jury's Inn, Millburn Road, Inverness. Both parties were in attendance.

Preliminary Issues

6. The Tribunal indicated that certain information contained within the written submissions of both parties would not be taken into account for the purposes of the CMD, namely information in relation to the conduct of parties during and after the tenancy and the condition of the Property at the end of the tenancy, as these matters were not relevant to the matter before the Tribunal.

Discussion

7. The Applicant referred to her application and subsequent written representations as outlining her case. She said that she became aware at the end of the tenancy that the deposit had not been lodged by the Respondent. The Respondent told her that she was not aware that she had to lodge the deposit; however, it was clear from the tenancy agreement that this had to be done. The deposit was lodged after the tenancy ended.
8. The Applicant said she was aware that the Respondent had informed the tenancy deposit scheme at the time of lodging the deposit that the tenancy ended on 27th November 2019 when it actually ended on 21st November 2019. The Applicant said that this had not affected the service provided by the tenancy deposit scheme and that adjudication would still take place.
9. The Respondent referred to her written representations. She said that she knew of the existence of the tenancy deposit schemes, and that it was referred to in the tenancy agreement, but she did not know it was mandatory. As a tenant herself in the past, she had not had a tenancy deposit lodged with a scheme. She accepted that ignorance of the law was not a defence.
10. The Respondent said there were mitigating circumstances in that she was moving house with two young children and going on holiday at the time of commencement of the tenancy. The Applicant had moved into the Property earlier than expected. The Respondent remembered logging into a tenancy deposit scheme on or around the 18th August 2018 but landlord registration details were required and she did not have those at that time. She attempted to log into the scheme on another occasion but her child was sick that day.

and she had to collect her from nursery. She was very busy at that time, and this contributed to the matter going out of her mind.

11. The Respondent said that no malice was intended. As soon as she became aware of the mandatory nature of the scheme at the end of the tenancy, she lodged the deposit, thus allowing the Applicant the opportunity to have the matter of return of the deposit adjudicated by a professional body. She was now aware of the seriousness of the matter and of the obligation upon the Landlord. It was a genuine oversight. There had been no intention to mislead the tenancy deposit scheme in relation to the end date of the tenancy.
12. Addressing the Tribunal on the amount of any award to be made, the Respondent said the impact upon the Applicant had not been great. She only became aware at the end of the tenancy that the deposit had not been lodged and it was lodged within 24 hours. There had been no harm to the Applicant.
13. The Respondent said that an award in the region of £50 to £100 would be appropriate and that to start at one times the deposit would be an incorrect interpretation of the statute. The Respondent said that she had not kept the deposit or put the Applicant through an extended process in relation to the deposit. Any sanction awarded must be just, fair and proportionate.
14. In response, the Applicant said that she had accepted her responsibility in respect of the condition of the Property at the end of the tenancy. All she was asking was that the Respondent accept her responsibility. The process had caused her harm in that her health has suffered due to having to take the matter to the Tribunal and undergoing the tenancy deposit adjudication process.
15. The Applicant was asked for submissions regarding the level of sanction that should be awarded. She said she had not come to the Tribunal with an amount in mind, but the sum of £50 was not remotely sufficient.
16. The Respondent submitted that the Tribunal should not give too much weight to the Applicant's submission regarding the medical impact upon the Applicant.
17. Both parties were content to have the matter decided at the CMD without the need for a hearing.

Findings in Fact

18.
 - (i) The parties entered into a tenancy agreement in respect of the Property commencing on 25th August 2018 and ending on 20th November 2019. The Applicant was allowed early entry to the Property and moved in on 4th August 2018. The Applicant was allowed a rent

free period to 25th August 2018 in return for decorating a bedroom within the Property.

- (ii) The Applicant paid a deposit of £750 to the Respondent at the commencement of the tenancy.
- (iii) The Applicant discovered at the end of the tenancy that the deposit had not been lodged with an approved tenancy deposit scheme.
- (iv) The deposit was lodged with My Deposit Scotland on 21st November 2019.
- (v) The Respondent is a first-time landlord. She has not let the Property or any other property previously.
- (vi) The Respondent has breached Regulation 3 by failing to pay the deposit into a tenancy deposit scheme.

Reasons for Decision

19. The Tribunal considered it a serious matter that the deposit had not been lodged with an approved tenancy deposit scheme within 30 days of the tenancy commencing as required by Regulation 3. The deposit remained unprotected throughout the term of the tenancy, a period of around 15 months. The Respondent was aware of the tenancy deposit schemes. The tenancy agreement and accompanying notes made clear the need for the deposit to be lodged. As conceded by the Respondent, ignorance of the law is not a defence.
20. In mitigation, the Tribunal took into account the fact that the Respondent was a first-time landlord, and that she was unaware of the mandatory nature of the Regulations. The Tribunal also took into account the fact that the Respondent admitted the breach and lodged the deposit with an approved scheme as soon as the matter was raised by the Applicant at the end of the tenancy, thus allowing adjudication to take place in relation to the condition of the Property. The Respondent also apologised to the Tribunal and the Applicant.
21. The Tribunal considered the relevant parts of the written and oral submissions in reaching its decision. The Tribunal has discretion as to the amount of award to be made. The Tribunal considered that a sum of £750, which is one times the tenancy deposit was a fair, just and reasonable sum in all the circumstances of the case.

Decision

22. An order for payment in the sum of £750 is granted in favour of the Applicant.

Right of Appeal

23. 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.

H Forbes

Legal Member/Chair

28th January 2020

Date