

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 Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”)

Chamber Ref: FTS/HPC/PR/18/1486

Re: Property at 3/4 3 Rowan Wynd, Paisley, PA2 6FG (“the Property”)

Parties:

Mr Grant Finlay, Mrs Mhairi Walters, 1/3 22 Neilston Road, Paisley, PA2 6LN (“the Applicant”)

Mrs Elizabeth Cassidy, 37 Mains River, Erskine, PA8 7JF (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member)

Decision (in absence of the Applicant and Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be refused

Background

1. By application dated 11 June 2018 the Applicant sought an order against the Respondent in terms of regulations 9 and 10 of the 2011 Regulations. A copy of the tenancy agreement and email correspondence were lodged with the application.
2. The case called for a case management discussion (“CMD”) on 21 August 2018. The First Applicant attended on behalf of both Applicants. There was no appearance by or on behalf of the Respondent.
3. Following the CMD the Legal Member issued a Note and adjourned the CMD to 27 September 2018 at 2pm. In terms of the CMD Note the Legal Member stated that the purpose of the adjournment was to allow the Applicants to investigate whether the Respondent is bankrupt, to identify the name of the Trustee, to discuss the application with the Trustee, to take legal advice

regarding the implications of the Respondent being bankrupt and consider further actions regarding intimation of the application to the Trustee. The Note and a letter advising of the date and time of the adjourned CMD were issued to all parties.

4. The case called before the Legal Member for a CMD on 27 September 2018. There was no appearance by or on behalf of either party. The Respondent did not contact the Tribunal administration in advance of the CMD or lodge any documents or representations. The Applicant sent an email to the Tribunal administration indicating that his claim in respect of the deposit had been accepted by the Respondent's trustee and that he was "happy with this outcome". He also indicated that he did not intend to continue with the application.

Case Management Discussion

5. The Legal member notes that in terms of the paperwork lodged with the application it appears that a tenancy deposit was paid by the Applicants to the Respondents in the sum of £495. It also appears that this deposit was not lodged with a tenancy deposit scheme and was not refunded to the Applicants when the tenancy came to an end.
6. The Legal Member notes that an email dated 9 August 2018 was sent to the Tribunal administration from Robin Paton, Insolvency Administrator, of Condis Accountants. A copy of this email is with the case papers. It was not referred to by the Legal member in the CMD Note following the previous CMD and it therefore appears that it may not have been with the case papers at the date of that CMD. The email states that the Respondent was sequestered on 14 August 2017. Robin Paton was appointed as Trustee in the sequestration. The email further advised that the Applicants had been notified of the sequestration and were entitled to submit a claim in relation to the deposit paid. One of the Applicants had already done so. The email further advises that "The effect of the sequestration is to make it incompetent for any creditor to do diligence against the debtor or to otherwise attempt to obtain payment of the debt owing at the date of sequestration"
7. The Legal Member notes that the Applicants are not in attendance and that the 1st Applicant has indicated by email that he does not intend to continue with the Application.

Findings in Fact

8. The Applicants are the former tenants of property in terms of a tenancy agreement dated 3 May 2017. The Applicants paid a deposit of £495.
9. The deposit was not lodged in a tenancy deposit scheme and was not refunded to the Applicants when the deposit ended in May 2018.

10. The Respondent was sequestrated on 14 August 2017.

Reason for decision

11. The Legal Member notes that that the Respondent has been sequestrated and that the Trustee in that sequestration has notified the Applicants because, as creditors, they are entitled to submit a claim in respect of the deposit. The Legal Member also notes that, although the application to the Tribunal under the 2011 Regulations is a separate matter from the failure to refund of the deposit, the Applicants have failed to attend the CMD and that the 1st Applicant has notified the Tribunal that he does not wish to continue with the application. The Legal Member is therefore satisfied that the application should be refused.

Decision

12. The application is refused.

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.

Josephine Bonnar

Josephine Bonnar, Legal Member

27 September 2018