

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) in respect of an application in terms of Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the Rules") for an Order for Payment under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations")

Chamber Ref: FTS/HPC/PR/19/1648

Re: Property at 2A Saint Mary's Wynd, Stirling, FK8 1BX ("the Property")

Parties:

Mr Jonathan Meek, 0/2 Devol Crescent, Glasgow, G53 5BD ("the Applicant")

Mr Stephen Smith, 2A Saint Mary's Wynd, Stirling, FK8 1BX ("the Respondent") per his agents, Belvoir Sales & Lettings, 79, Barnton Street, Stirling FK8 1HJ ("the Applicant's Agents")

Tribunal Members:

Karen Moore (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that Respondents had not complied with Regulation 3 of the 2011 Regulations and made an Order of compensation amounting to ONE THOUSAND TWO HUNDRED POUNDS (£1,200.00) Sterling.

Background

1. By application received on 29 May 2019 ("the Application"), the Applicant applied to the Tribunal for an Order for Payment against the Respondent under Regulations 9 and 10 of the 2011 Regulations on the grounds that the Respondent had not complied with Regulation 3 of the 2011 Regulations.
2. On 19 July 2019, a legal member of the Tribunal with delegated powers of the Chamber President accepted the Application and a Case Management Discussion ("CMD") was fixed for 30 August 2019 at 11.30 at STEP Stirling

Enterprise Park, John Player Building, Stirling, FK7 7RP. The CMD was intimated to both parties.

Case Management Discussion

3. The first CMD took place on 30 August 2019 at 11.30 2019 at 10.00 at the said STEP Stirling Enterprise Park, John Player Building. The Applicant was present and unrepresented. The Respondent was not present and was represented by Mr. Joseph Curran of the Applicant's Agents.
4. I explained to the Parties the basis of the Application with reference to the 2011 Regulations and in particular, that in terms of Regulation 10 of the 2011 Regulations, that if the Tribunal is satisfied that the landlord did not comply with Regulation 3 of the 2011 Regulations the Tribunal must grant an Order.
5. I asked Mr. Curran if the Respondent accepted that the deposit had been paid by the Applicant and his co-tenant but had not been paid into an approved scheme outwith the statutory time limit as set out in Regulation 3 (a) of the 2011 Regulations and he confirmed that this was so. Mr. Curran explained that the lodging of the deposit was dealt with by his organisation on behalf on the Respondent and that a problem with his organisation's software had meant that the deposit had not been paid on time.
6. I asked Mr. Curran if the Respondent had provided the information required by Regulation 3 (b) of the 2011 Regulations and he replied that this "would have been done" and was in referred to in the tenancy agreement, in any event. I asked Mr. Curran to show me where this information was set out in the tenancy agreement which had been lodged by the Applicant and he could not do so. He advised me that the tenancy agreement as lodged by the Applicant was incomplete. The Applicant advised me that the tenancy agreement as lodged by him was all that he had been given. I asked the Applicant if he had been given the information required by Regulation 3 (b) of the 2011 Regulations and he said he had not and became aware of where the deposit was lodged after the end of the tenancy. He also said that he had been advised by the approved scheme that the landlord's name is "Brian Macaulay". Mr. Curran advised me that this misinformation was a result of another problem with his organisation's software.
7. Mr. Curran explained that his organisation now uses a different software system and the issue should not reoccur. Mr. Curran accepted that when the late lodging of the deposit with an approved scheme became known to his organisation no explanation or apology was made to the Applicant.

8. I asked the Applicant if he had a view on the amount of the Order which should be made and he said that he did not. He advised me that it was stressful for his co-tenant that, at the end of the tenancy, they did not where or if the deposit had been properly lodged.
9. I asked Mr. Curran if he had a view and he advised me that he appreciated that he knew why the Regulations were in place and that it irritated him when people did not comply with the Regulations and when people had been "fleeced" by landlords. He advised me that the lodging of the deposit was only late by nine days.
10. Both Parties confirmed that the deposit had been repaid in full.

Findings in Fact

11. From the Application and the CMD, I found that the facts as set out in paragraph 5 hereof had been established and that the Respondent had failed to comply with Rule 3 (a) of the 2011 Regulations. I accepted that the deposit had not been at risk and had been lodged during the course of the tenancy and within a short time after the statutory timescale.
12. From the Application and the CMD, I found that, on the balance of probabilities, the Respondent had failed to comply with Rule 3 (b) of the 2011 Regulations. In this regard, I found the Applicant to be straightforward and truthful in his submissions. I found Mr. Curran on behalf of the Respondent to be vague and to rely on assumptions of what "would have been done", albeit that his position was that his organisation's procedures were unreliable. Although, Mr. Curran stated that it irritated him when people did not comply with the Regulations, his attitude and the manner in which he made submissions to me were casual and off-hand and did not support his stated position in that regard. He did not seem to appreciate the importance of Rule 3 (b) of the 2011 Regulations and that the landlord's duty is not just to lodge a deposit with an approved scheme but to inform the tenant of this and so reassure the tenant the deposit is not at risk and to advise the tenant how and when the deposit might be returned.

Decision and Reasons for Decision

13. Having found that the Respondent had failed to comply with Rule 3(a) and Rule (b) of the 2011 Regulations, I had regard to Regulation 10 of the 2011 Regulations which states that if the Tribunal is satisfied that the landlord did not comply with Regulation 3 of the 2011 Regulations, the Tribunal must grant an Order. I then had regard to Rule 17(4) of the Rules which state that the Tribunal "may do anything at a case management discussion which it may

do at a hearing, including make a decision" and, accordingly, I determined to grant an Order for payment in terms of Rule 10 of the 2011 Regulations.

14. In determining the amount of the Order, I had regard to the submissions made by and on behalf of both Parties and my finding that the deposit had not been at risk. I had regard to the purpose of the 2011 Regulations and took the view that the Regulation 10 of the 2011 Regulations sanction is intended to be punitive in respect of a breach of both Regulation 3(a) and 3 (b) of the 2011 Regulations, and so, I determined that twice the amount of the tenancy deposit is appropriate in this matter. Had the Respondent lodged the tenancy deposit at a later date, I would have imposed an Order for that the full amount of thrice the tenancy deposit. Had the Respondent complied with Regulation 3 (b) of the 2011 Regulations, I would have imposed an Order for one time the amount of the tenancy deposit

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.

Karen Moore

Legal Member/Chair

30 August 2019

Date