

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 Sections 120-122 of the Housing (Scotland) Act 2006 and Regulation 4 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/18/2309

Re: Property at 64 Kirklands, Renfrew, PA4 8HR (“the Property”)

Parties:

Miss Kirsty McGurn, 61 Rowan Avenue, Renfrew, PA4 9AU (“the Applicant”)

Ms Annabella Brown, Taigh A'Chladaich, Southend, Campbeltown, PA28 6RW (“the Respondent”)

Tribunal Members:

George Clark (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be granted without a hearing and made an Order for Payment by the Respondent to the Applicant of the sum of One Thousand Pounds.

Background

By application, dated 20 August 2018 and received by the Tribunal on 30 August 2018, the Applicant sought an Order for Payment in respect of the failure by the Respondent to lodge a tenancy deposit with the scheme administrator of an approved scheme as required by Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”).

The application was accompanied by copies of Short Assured Tenancy Agreements between the Parties commencing on 1 May 2015, at a rent of £500 per month and 30 June 2017, at a rent of £590 per month. Both agreements stated that the deposit was nil. The Applicant also provided the Respondent with a copy of a letter from the Respondent dated 30 April 2018, in which the Respondent refers to “the balance of the deposit” being paid to the Applicant’s account within 14 days of a final inspection. In a reply dated 29 May 2018, the Applicant drew the attention of the Respondent to the fact that the deposit should have been paid into an approved deposit scheme.

By letter, dated 7 January 2019, the Tribunal advised the Parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written representations by 22 January 2019.

The Respondent made written representations dated 21 January 2019. She stated that she was a registered landlord and that the Property was her only rented property. The only reason that she had agreed to rent out the Property to the Applicant was due to the Applicant's challenging circumstances at the time. The Respondent provided copies of correspondence between the Parties relating to the termination of the tenancy. In the course of this correspondence, the Respondent had realised that she had not complied with the tenancy deposit scheme, but she did not see the need to rectify the situation, as she had every intention of settling the deposit issue once the tenancy end date had been sorted out and the rent paid to date.

The Respondent confirmed that the Applicant had paid a deposit of £500 in advance of moving in to the Property in 2015. She had an initial setup in place for the deposit which appeared acceptable to the Applicant, but she did realise that the deposit had remained unprotected for a number of years. This was down to her misinterpretation of the rules, but the deposit was available to return to the tenant on completion of the tenancy.

She stated that she was prepared to accept 19 May 2018 as the end of the tenancy, in which case she invited the Tribunal to confirm the application as invalid as it was outwith the three month limit set out in the 2011 Regulations.

Case Management Discussion

A Case Management Discussion took place at Glasgow Tribunals Centre, 20 York Street, Glasgow on the afternoon of 24 January 2019. The Applicant was present and was supported by Mrs Joan Blake. The Respondent had advised the Tribunal by e-mail on 14 January 2019 that she would not be attending the Case Management Discussion, but would be making written submissions, which were received by the Tribunal on 22 January 2019.

The Applicant confirmed to the Tribunal that no part of the deposit had been repaid to her. She confirmed that she had moved out on 19 May 2018, having paid rent up to 20 May, but the Respondent was not prepared to return the deposit unless the Applicant paid rent for an additional 28 day period. The Respondent was claiming rent for the whole month of May.

Reasons for Decision

Rule 17 of the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017 states that the Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision. The Tribunal was satisfied that it had before it all the information and documentation it required and that it could make a decision on the application without a hearing.

Regulation 3(1)(a) of the 2011 Regulations states that a landlord must, within 30 working days of the beginning of the tenancy pay the deposit to the scheme administrator of an approved scheme and Regulation 10 provides that if satisfied that the landlord did not comply with any duty in Regulation 3, the Tribunal **must** order that the landlord pay to the tenant an amount not exceeding three times the amount of the tenancy deposit.

The Tribunal considered all the evidence before it. In her written representations, the Respondent had stated that an end date for the tenancy had not been agreed, but if

both parties agreed to 19 May 2018 as the date of end of the tenancy, she would still require rent to that date and payment to cover a further 28 days' notice period. She also commented that the start of that 28 day period might in fact be said to be 21 June 2018.

The Tribunal was satisfied that the Applicant had vacated the Property on 19 May 2018, but was not satisfied that the Respondent accepted this as the end date of the tenancy, as she was insisting on payment of rent for a further 28 day period at least. Accordingly, the Tribunal held that the application, dated 20 August 2018 and received on 30 August 2018 could not be said to have been made later than three months after the tenancy had ended, as the end-date had not been agreed between the Parties and the Respondent was not prepared to accept rent only up to 19 May 2018. The Tribunal therefore admitted the application for determination, holding that it was not time-barred in terms of Regulation 9(2) of the 2011 Regulations.

The Tribunal was concerned that, even after the Respondent realised her error in failing to lodge the deposit, she did not see the need to rectify the situation and that, some 9 months on, she was still insisting on retaining it, in its entirety, under her control. It was not the function of the Tribunal to determine whether any deduction from the deposit was justified. That would have been the job of the approved tenancy deposit scheme administrators and, by failing to lodge the deposit with such a scheme, not only had the Applicant's money been at risk since 2015, but she had been denied the opportunity to have any outstanding issues such as rent adjudicated by an independent body. The Tribunal regarded the Respondent's failure as serious. The Tribunal noted the comment by the Respondent in her written representations that she only rented out one property, but it is incumbent on all landlords to know and abide by all regulations that affect them.

The Tribunal was satisfied that the Respondent had failed to comply with the requirement to lodge the deposit and that it was, therefore, bound to make an Order for Payment. The Tribunal took all the evidence before it into account in arriving at the amount that it would require the Respondent to pay.

The Tribunal stresses that the amount is not an award of compensation, so an Applicant does not have to prove actual loss or inconvenience and distress. In addition, the award does not in any way settle the outstanding dispute between the Parties as to whether any further sum is due by the Applicant in respect of rent and, of course, the Respondent is still holding the £500 deposit. The outcome of this application has no bearing on these matters.

Decision

The Tribunal decided to grant the application without a hearing and to make an Order for Payment by the Respondent to the Applicant of One Thousand Pounds.

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.

George Clark

Legal Member/Chair

24 January 2019
Date