

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 the Housing (Scotland) Act 2006 section 121 and Regulations 3 and 10 the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/19/2362

Re: Property at 48 Eriskay Place, North Muirton, Perth, PH1 3DH (“the Property”)

Parties:

Miss Kerry Burgess, 37 Bute Drive, North Muirton, Perth, PH1 3BG (“the Applicant”)

Mr Craig Smith, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Landlord is in breach of her obligations in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“Regulation 3”). The Respondent shall make payment to the Applicant in the sum of EIGHTEEN HUNDRED POUNDS (£1800) STIRLING

Background

1. An application was received by the 28th July 2019 and signed on 4th July 2019. The application was submitted under Rule 103 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on the Respondent failing to place the deposit in an approved scheme terms of 3 of the 2011 Regulations.

2. The Applicant advised in the application that the tenancy had commenced on 16th March 2016. A deposit of £600 was paid to the Respondent. The Respondent did not place the deposit in any scheme until 14th November 2016 when it was placed in Safe Deposit Scotland.
3. The Tribunal had before it:-
 - a. Copy tenancy agreement dated 16th March 2016 in error as it commence on 16th March 2012 as per deposit certificate;
 - b. Scottish Landlord Register print out confirming Craig Smith as landlord;
 - c. Safe Deposits Scotland tenancy deposit certificate showing date of deposit of 14th November 2012
 - d. A Notice of Acceptance of Application was signed on 29th October 2019.
4. On 15th November 2019, all parties were written to with the date for the Case Management Discussion ("CMD") of 17th December 2019 at 10am at The Inveralmond Business Centre, Auld Bond Road, Perth. The letter also requested all written representations be submitted by 6th December 2019.
5. On 20th November 2019, sheriff officers attempted to serve the documentation for the CMD on the Respondent but were not able to effect service.
6. On 22nd November 2019, the Applicant was advised that the hearing had been postponed to effect service by advertisement on the Respondent.
7. On 16th December 2019, all parties were written to with the date for the CMD of 20th January 2020 at 10am at The Inveralmond Business Centre, Auld Bond Road, Perth. Service by advertisement took place on the Respondent on 16th December 2019.

The Case Management Discussion

8. The Applicant did not attend. She emailed the Housing and Property Chamber on the morning of the hearing to advise that her child was ill and she was unable to attend but happy for the case to proceed in her absence. The Respondent did not attend the Tribunal today and has made no written representations. The Tribunal proceeded in terms of Rule 29 of the Rules.
9. The Respondent has provided no evidence to contradict the evidence of the Applicant.

Reasons for the decision

10. Accordingly the Tribunal finds in fact:
 - a. The Applicant paid a deposit of £600 on of a tenancy in the Property owned by the Respondent under tenancy agreement which was signed

- on 10th March 2016 (in error as 2016 as tenancy started in 2012 as per tenancy deposit certificate).
- b. The start date of the tenancy was 16th March 2012.
 - c. The end date of the tenancy was 11th May 2019.
 - d. The Applicant did not receive notice from the Respondent of details of the rent deposit scheme into which the deposit has been paid.
 - e. The deposit was lodged with
 - f. No evidence has been provided by the Respondent that he has met his duties in terms of Regulation 3.
 - g. The Applicant provided notice to the Respondent by email on 11th April 2019 of her intention to end the tenancy.

Decision

11. The Respondent has a duty under Regulation 3 to place the deposit in an approved scheme within the specified time but failed to do so. The Respondent offered no evidence to the Tribunal in advance of the hearing and did not attend the hearing to advise of any reason why the deposit was lodged outwith the time allowed. The Tribunal found that the Applicant was entitled to be granted an order for payment amounting to three times of the deposit (£1800).

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.

G Miller

Legal Member/Chair

Date

20 Jan 2020