



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy Deposit Scheme (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/19/3226

Re: Property at 32 Old Street, Girvan, KA26 9HG (“the Property”)

Parties:

Mr George Phillips, 47 Robertson Crescent, Ayr, KA8 0SN (“the Applicant”)

Mr David Whiteford, Maxwellston Farm, Girvan, KA26 9RH (“the Respondent”)

Tribunal Member:

Alastair Houston (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of NINE HUNDRED AND SIXTY POUNDS (£960.00) STERLING be made in favour of the Applicant

1. Background

- 1.1 This is an application under Rule 103 of the First-tier Tribunal for Scotland (Housing & Property Chamber) Rules of Procedure 2017 (“the Rules”) being an application for an order for payment where a landlord has failed in his duties in respect of a tenancy deposit. The application stated that the Applicant wished the return of the deposit and compensation.
- 1.2 There had been a previous Case Management Discussion on 9 December 2019. The Tribunal had noted that the Respondent accepted that a deposit of £480 had been taken under the tenancy agreement in respect of the property and that this had not been lodged with an approved scheme. The Tribunal adjourned the Case Management Discussion and invited parties to lodge written representations in advance of the future Case Management Discussion.

2. The Case Management Discussion

- 2.1 The Case Management Discussion took place on 7 February 2020. The Applicant and Respondent both appeared personally. Neither party was represented.
- 2.2 The Tribunal noted nothing further in terms of written submissions had been received by either party. The Tribunal advised parties that an order could be made at the Case Management Discussion, given that the breach was admitted. The Tribunal invited both the Applicant and the Respondent to make any further submissions as to whether an order should be made.
- 2.3 The Respondent confirmed that a deposit was taken and not lodged. His wife usually dealt with matters relating to the tenancy. He advised that he had attempted to return the deposit to the Applicant at the end of the tenancy. The Applicant did not come to an arranged meeting and he had had no contact since. He was willing to return the deposit. He had been a landlord for around 15 years. His full time occupation was a farmer. He owned six properties for the purpose of renting to tenants.
- 2.4 The Applicant advised he had had no contact arranging a meeting at the flat. His flatmate had advised the Respondent had attended whilst he was out. He had checked with the relevant deposit schemes and nothing had been lodged. He simply wanted the deposit back.
- 2.5 Parties had nothing further to add. The Tribunal adjourned briefly to consider matters. Following an adjournment, the Tribunal considered that it could deal with the application without the need for a hearing.

3. Reasons For Decision

- 3.1 Regulation 10 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 permits the Tribunal to make an order for payment of up to three times the deposit where there has been a breach of duty on the part of the landlord in respect of a deposit. In the present application, it was not disputed that a deposit had been paid, had not been lodged with a scheme nor, as at the date of the Case Management Discussion, had it been returned to the Applicant.
- 3.2 The Tribunal also considered that little in the way of mitigation had been offered by the Respondent. The Tribunal accepted he had made an effort to return the deposit, and was still willing to do so. The Tribunal also took into account that the Applicant was not a full time landlord, with his wife assisting him in the management of the property, albeit he did have a number of properties made available to tenants.
- 3.3 Accordingly, the Tribunal considered an order for payment of £960.00, being twice the original deposit, to be an appropriate sanction in the present application. The Tribunal cannot order repayment of the principal deposit, however, should the Respondent not return this, it is a matter for

the Applicant as to whether he wished to make a separate application under Rule 111 of the Rules to seek its return.

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.

A Houston

Legal Member/Chair

Date

7 FEBRUARY 2020