

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 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/19/3818

Re: Property at 3 Belmont Road, Flat A, Aberdeen, AB25 3SR ("the Property")

Parties:

Miss Sima Mahdjoub, 13 Powis Crescent, Flat C, Aberdeen, AB24 3YS ("the Applicant")

Ms Gail Davidson, 5 Binghill Crescent, Aberdeen, AB13 0HU ("the Respondent")

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment of the sum of £450 in terms of Regulation 10 (a) of The Tenancy Deposit Schemes (Scotland) Regulations 2011(the Regulations) should be made.

BACKGROUND:

1. On 28 November 2019 the Applicant's Representatives applied under Rule 103 of the First tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure (the Rules) for payment under Regulation 10 (a) of the Regulations.
2. The Applicant submitted to the Tribunal tenancy agreement for the tenancy commencing on 15 August 2019, email messages between the Applicant and the Respondent of 18 and 19 October 2019, screenshot of a text exchange between the parties on 9 June 2019.
3. On 21 January 2020 The Aberdeen Law Project lodged written submissions on behalf of the Applicant. The Respondent also lodged written representations on

year and was hoping once all three tenants would be in the property there would be a joint lease and she was planning to lodge the deposit then. The tenancy then came to an end just after the third student moved in. She had planned to lodge the deposit at that stage but only a month was left and so she did not hand the deposit to the scheme. She stated this was an error on her part and she had absolutely no intention to deprive the tenants of the deposit. In fact, she paid the deposit back within a day of the Applicant moving out and this was quicker than it would have been had they used the deposit scheme. She apologised for any inconvenience but also stated she did not think her mistake led to any stress for the Applicant as she paid back the outstanding agreed amount immediately after the Applicant moved out. She confirmed she had more than one property and had been letting out the property in question for more than 10 years. She stated she had learned a lot from this process and would not make this mistake again.

The legal test:

11. In terms of Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (the Regulations) an application under that Regulation must be made within 3 months of the end of the tenancy.
12. In terms of Regulation 10 "if satisfied that the landlord did not comply with any duty in Regulation 3 the First tier Tribunal
 - (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and
 - (b) may, as the First tier Tribunal considers appropriate in the circumstances of the application order the landlord to (i) pay the tenancy deposit to an approved scheme; or (ii) provide the tenant with the information required under regulation 42."
13. In terms of Regulation 3 "(1) A landlord who had received a tenancy deposit in connection with a relevant tenancy must, within 30 days of the beginning of the tenancy (a) pay the deposit to the scheme administrator of an approved scheme;

Findings in fact:

- I. The Applicant and the Respondent entered into a Private Residential Tenancy Agreement for the property on 15 August 2019.
- II. The Respondent is the landlord stated in the Tenancy Agreement under clause 2.
- III. The Applicant paid a deposit of £300 to the landlord on 9 June 2019.
- IV. The tenancy started on 15 August 2019.
- V. The tenancy ended on 17 October 2019.
- VI. The deposit was not lodged with an approved scheme.
- VII. The Respondent has more than one rental property and has been renting out the property for over 10 years.
- VIII. The clause in the tenancy agreement dealing with the deposit (Clause 10) states that the scheme administrator is Safe Deposit Scotland and provides a contact telephone number.
- IX. It states that the landlord must lodge any deposit they receive with a tenancy deposit scheme within 30 working days of the start of the tenancy

- X. The Applicant acknowledged receipt of the repayment of the deposit less an agreed sum of £20 on 19 October 2019.

Reasons for Decision:

14. The tribunal considers that the landlord did not comply with the requirements of Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011.
15. The deposit was not paid over to an approved scheme within 30 working days of the commencement of the tenancy agreement.
16. Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 is a regulatory sanction to punish the landlord for non-compliance with the rules. The non-compliance with the Regulations is not disputed by the landlord.
17. Ultimately the Regulations were put in place to ensure compliance with the Scheme and the benefits of dispute resolution in cases of disputed deposit cases, which the Schemes provide.
18. Whilst the Tribunal notes the request in the written submissions of the Applicant for payment of the maximum of three times the deposit amount, the Tribunal does not agree that the case warrants the maximum remedy.
19. The Tribunal considers that the discretion of the Tribunal requires to be exercised in the manner set out in the case *Jenson v Fappiano* (Sheriff Court (Lothian and Borders) (Edinburgh) 28 January 2015 by ensuring that it is fair and just, proportionate and informed by taking into account the particular circumstances of the case.
20. The Tribunal took into account the length of time the deposit was unprotected, which the whole tenancy period, the fact that the landlord had selected a specific registered scheme and stated the landlord's obligations regarding the lodging of the deposit in the tenancy agreement and thus must have been aware of her obligations, the fact that the Respondent has been letting property for a considerable time and thus is familiar with the process of lodging the deposit and that ultimately the action of the Respondent meant that the Applicant would not have had access to the dispute resolution process envisaged to be used under the Regulations. On the other hand the Tribunal also took into account that the Respondent credibly stated she never intended not to pay the deposit back, that she had returned the agreed outstanding sum within 48 hours of the end of the tenancy and that she credibly stated that she had learned through the process and would not repeat this mistake.
21. In all the circumstances the tribunal considered it fair, proportionate and just to make an order for the sum of £450, which constitutes a meaningful sanction for non-compliance of the Regulations at the level of 1 1/2 times the deposit sum of £300.

Decision:

- 22. The First-tier Tribunal for Scotland (Housing and Property Chamber) grants an order against the Respondent for payment to the Applicant of the sum of £450 in terms of Regulation 10 (a) of The Tenancy Deposit Schemes (Scotland) Regulations 2011.**

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.



Legal Member/Chair

mpw 6.2.2020

Date