

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 Section 16 of the Housing (Scotland) Act 2014 and Regulations 3 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/19/2828

Re: Property at 8 Roseland Terrace, Dumfries, DG2 7EU ("the Property")

Parties:

Mr Jimmy Russell, Ms Agne Zdanaviciute, 1 Roseland Terrace, Troqueer, Dumfries, DG2 7EU ("the Applicant")

Ms Marie Steenson, 1 Castledykes Cottage, Kingholm Road, Dumfries, DG1 4SR ("the Respondent")

Tribunal Members:

George Clark (Legal Member)

Decision

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 £800.

Background

By application, received by the Tribunal on 9 September 2019, the Applicant sought an Order for Payment under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") in respect of a failure by the Respondent to lodge a tenancy deposit with an approved tenancy deposit scheme.

The application was accompanied by copies of a tenancy agreement between the Parties commencing on 17 April 2018, in respect of which a deposit of £400 was paid and a letter, dated 14 May 2019 from the Applicant to the Respondent, advising that the Applicant would be terminating the tenancy on 14 June 2019.

In the application, the Applicant contended that the Respondent had failed to lodge the deposit with an approved tenancy deposit scheme within 30 working days of the beginning of the tenancy, as required by Regulation 3 of the 2011 Regulations. The Applicant had given 28 days' notice of termination of the tenancy. The Respondent

had refused to repay the full deposit to the Applicant. The Applicant, therefore, was seeking an Order under Regulation 10 of the 2011 Regulations for payment by the Respondent of the sum of £1,200 or such other principal sum as the Tribunal might think fit with interest thereon at the rate of 8% per annum from the date of citation until payment.

On 18 September 2019, Dumfries & Galloway Citizens Advice Service, acting on behalf of the Applicant, submitted to the Tribunal a number of photographs showing the condition of the Property at the commencement and at the termination of the tenancy.

On 30 October 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 20 November 2019. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held at Lochvale House, Georgetown Road, Dumfries, on the afternoon of 4 December 2019. The Applicant was present and was represented by Mr Ian Maxwell of Dumfries & Galloway Citizens Advice Service. The Respondent was also present.

The Respondent told the Tribunal that she had been unaware of the existence of the tenancy deposit scheme, but she was well aware that the deposit money belonged to her tenants, so she had lodged it in a separate bank account. She had refunded £300 of the deposit to the Applicant on 4 August 2019 and the balance on or about 11 September 2019. She had new tenants in the Property and had lodged their deposit with Safe Deposits Scotland, an approved tenancy deposit scheme. The Applicant accepted that the deposit had now been repaid in full, but asked the Tribunal to note how long it had taken for the payment to be made.

The Respondent accepted that the Applicant was entitled to end the tenancy on giving the 28 days' notice that had been given.

The Respondent repeatedly tried to introduce evidence about the condition of the Property and matters that had arisen during the tenancy. The Applicant had provided the Tribunal with a dossier of photographs taken at the commencement and the termination of the tenancy. Mr Maxwell also stated that he was fully prepared to counter any comments made by the Respondent, but the Tribunal determined that such evidence by both Parties was not relevant to the Decision before it. That Decision was limited to the failure of the Respondent to lodge the Deposit and did not extend to consideration of any reason the Respondent may have felt she had for not refunding it in full whenever the tenancy ended.

The Respondent provided the Tribunal with a copy of a letter she had sent to the Tribunal, which was a copy of a letter she had sent to the Applicant when she refunded the balance of £100. She was concerned that the Chair of the Tribunal had not already seen this, but the Chair responded that he had it now and would consider it in arriving at his Decision. After the Case Management Discussion ended, the Chair was able to confirm that the letter had in fact been e-mailed to him on 15 November 2019 but, as it contained almost exclusively the Respondent's views as to why she had not returned the deposit earlier, the only relevance of the letter to the present proceedings was that it determined the date on which she had refunded the balance of the deposit.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides 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 would determine the application without a Hearing.

Under Regulation 3(1) of the 2011 Regulations, 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 provide the tenant with certain information required under Regulation 42. Under Regulation 10 of the 2011 Regulations, if satisfied that the landlord did not comply with any duty in relation to Regulation 3, the Tribunal **must** order the landlord to pay to the tenant an amount not exceeding three times the amount of the tenancy deposit.

The Tribunal found that the Respondent had not lodged the deposit with an approved scheme and had not provided the information required by Regulation 42 of the 2011 Regulations. The Respondent had explained that she had been unaware of the requirement to lodge deposits in a tenancy deposit scheme, but that she had placed the deposit in a separate bank account.

The Tribunal noted that the Applicant's money had been at risk for the duration of the tenancy and had not been fully repaid until 5 months after the tenancy ended, but that it had now been refunded. The very purpose of the 2011 Regulations had been frustrated because, if the deposit had been lodged, any issues between the Parties would have been determined by an independent third party, namely the administrators of the tenancy deposit scheme. Mr Maxwell told the Tribunal that the whole process had been upsetting for the Applicant, who had not wished to have an ongoing argument with the Respondent on matters which would have been determined by the tenancy deposit scheme, had the Respondent complied with her legal obligations.

Taking into account all the facts and circumstances of the case, including all written and oral evidence, the Tribunal determined that a fair, just and proportionate sanction for the Respondent's failure to lodge the deposit in an approved tenancy deposit scheme was two times the amount of the deposit. The Tribunal refused the request of the Applicant to make an award of interest on that sum.

Decision

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 £800..

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. C
Legal Member/Chair

4th December 2019
Date