

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 for the purposes of Sections 120-122 of the Housing (Scotland) Act 2006 and in terms of Regulations 9 and 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/19/0605

Re: Property at Balegra Farmhouse, Shannochie, Isle of Arran, KA27 8SH (“the Property”)

Parties:

Ms Helena Spiers, Ashlea, Kingscross, Isle of Arran, KA27 8RG (“the Applicant”)

Mr Alan McGrath, C/O Thorncliffe, Springbank, Brodick, Isle of Arran, KA27 8BE (“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 determined without a hearing, granted the application and made an Order for Payment by the Respondent to the Applicant of £1,000.

Background

By application, received by the Tribunal on 25 February 2019, the Applicant sought an Order for Payment against the Respondent in respect of the Respondent's failure to lodge a tenancy deposit with an approved tenancy deposit scheme.

The Applicant stated that she had paid to the Respondent by bank transfer on 27 June 2018 a deposit of £1,100 in respect of her tenancy of the Property. She had given notice and vacated the Property on 31 December 2018.

The application was accompanied by a copy Private Residential Tenancy Agreement between the Parties, commencing on 27 June 2018 at a monthly rent of £1,100, with a deposit of £1,100.

The Applicant also provided to the Tribunal copies of e-mails, all dated 30 January 2019, from SafeDeposits Scotland, MyDeposits Scotland and Letting Protection Service Scotland, all confirming that they did not hold the Applicant's deposit.

The Application was also accompanied by copies of e-mails between the Parties, including an e-mail from the Applicant to the Respondent dated 3 December 2018, in which she gave 28 days' notice of termination of the tenancy and asked the Respondent to use the deposit to meet the rent that had become due on 27 November 2018, for the final month of the tenancy.

By letter dated 21 March 2019, the Tribunal advised the Parties of the date, time and venue for a Case Management Discussion and invited the Parties to make written representations by 7 April 2019. On 10 April 2019, the day prior to the scheduled date for the Case Management Discussion, the Respondent e-mailed the Tribunal to say that he was in the United Arab Emirates and had only just received the letter of 21 March 2019. He requested and the Tribunal granted a postponement.

Case Management Discussion

A Case Management Discussion was held by way of a conference call on the afternoon of 31 May 2019. The Applicant took part in the conference call, but the Respondent did not. The Applicant confirmed that the deposit had been used to pay the last month's rent. She told the Tribunal that when she had not received the information required by Regulation 42 of the 2011 Regulations, she had looked online to check where the deposit had been lodged. Having ascertained that none of the approved schemes held the deposit and having reason to have some concerns as to whether the deposit would be refunded at the end of the tenancy, she had taken the step of asking the Respondent to use the deposit to meet the final rent payment. He had not responded, so she assumed he had acquiesced in that arrangement. The Applicant was of the view that the Respondent did not really know what his responsibilities were as a landlord. She added that it had been a great source of regret that she had had to make the application, but she felt the Respondent had to know that he must comply with regulations, including those relating to the safeguarding of tenants' deposits.

Reasons for Decision

In terms of Regulation 3(1) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("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 of the 2011 Regulations.

Under regulation 10 of the 2011 Regulations, if the Tribunal is satisfied that a landlord did not comply with any duty in Regulation 3, the Tribunal **must** order the landlord to pay to the tenant an amount not exceeding three times the amount of the deposit.

The Tribunal did not have any evidence from the Respondent to explain his failure to lodge the deposit, which was a significant sum of money, which had been at risk throughout the six month period of the tenancy. The Tribunal also noted, however, that the Applicant had asked the Respondent on 3 December 2018 to use the deposit to meet the rent due for the last month of the tenancy, so she had had no expectation that any part of the deposit would be refunded to her. This meant that, had the deposit been lodged with an approved scheme, the Applicant would not have had any part of it returned to her, although the Tribunal accepted that in those circumstances the Applicant might have paid the final month's rent in the normal way. Taking all factors into account and noting that there had been no actual loss incurred by the Applicant, the Tribunal was not prepared to make an Order for

Payment by the Respondent of a sum approaching the maximum figure that it could award, but, as the Respondent had offered no explanation for his failure, the sum should be sufficient to act as a deterrent against the Respondent repeating his failure with successor tenants.

Decision

The Tribunal determined that the application should be determined without a hearing and made an Order for Payment by the Respondent to the Applicant of £1,000.

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 Clark

Legal Member/Chair

31 May 2019

Date