

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/19/2640

Re: Property at 267 King Street, Aberdeen, AB24 5AH (“the Property”)

Parties:

Miss Eden Kay, 98 Mahon Court, Moodiesburn, G69 0QF (“the Applicant”)

Mr David Reid, 105 Oakhill Grange, Aberdeen, AB15 5EA (“the Respondent”)

Tribunal Members:

Gillian Buchanan (Legal Member)

Decision

At the Case Management Discussion (“CMD”) the Applicant was in attendance supported by Mr Tommy Noonan and the Respondent was in attendance supported by his wife, Mrs Jan Reid.

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

- The Respondent leased to the Applicant the subjects at 267 King Street, Aberdeen AB24, 5AH (“the Property”) in terms of a Private Residential Tenancy Agreement dated 26 April 2018 (“the PRT”).
- The PRT stated that the tenancy would commence on 30 June 2018 and that the rent payable in terms thereof was £325 per calendar month payable in advance.
- Paragraph 10 of the PRT stated that at the start of the tenancy or earlier the Applicant would pay to the Respondent a deposit of £325.00, that the Respondent must pay the deposit into a tenancy deposit scheme within 30 working days of the start of the tenancy and referred to the chosen tenancy deposit scheme as My Deposits Scotland, details of which were provided.

- The Applicant paid the deposit of £325 to the Respondent on 26 April 2018.

The Case Management Discussion

At the CMD the Applicant stated:-

- That she had paid the deposit to the Respondent in April 2018 to secure her room at the Property.
- That on moving out she emailed the Respondent to ask which tenancy deposit scheme had been used.
- That the Respondent replied indicating that she was not entitled to return of the deposit.
- That she emailed again asking which scheme the deposit had been paid into.
- That the Respondent replied referring to the rent and offering her one half the deposit.
- That she declined that offer and asked again which scheme the deposit had been paid into. She said she would prefer to deal with the scheme and resolve any issues there.
- That the Respondent eventually offered to pay back all of the deposit and in fact paid back £335, being £10 more than that paid. Payment was made around mid June/early July 2019.
- That at no time did the Respondent answer her various enquiries as to the scheme into which the deposit had been paid.
- That she moved out the Property on 3 June.

At the CMD the Respondent stated:-

- That he had not paid the deposit into any tenancy deposit scheme.
- That he knew about tenancy deposit schemes and what they do.
- That he has 4 properties rented out, one of those being to his daughter and the other 3 for commercial purposes.
- That he has had the properties for around 10 years.
- That he has never previously used a tenancy deposit scheme for any of the properties.
- That he sometimes doesn't ask tenants for a deposit at all.
- That when the Applicant paid the deposit on 26 April 2018 he was starting a new job that day having been out of work for a period of 2 years and that this was to be a learning curve in the circumstances.
- That he forgot to pay the deposit into a scheme and only realised when the Applicant asked for it back at the end of the tenancy.
- That failure to lodge the deposit in a scheme was an oversight.
- That he had never previously taken advice on using tenancy deposit schemes but is using them now.
- That when the Applicant asked for the deposit back he raised with her issues relative to unpaid rent, costs of gas and electricity, a missing door handle, a malfunctioning freezer and a dismantled headboard. (The Tribunal stated that these matters were not relevant for consideration and did not require to hear about them.)
- That he paid the deposit back to the Applicant in full.

Reasons for Decision

- The Tribunal takes a landlord's failure to comply with the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Regulations") very seriously.
- The Respondent is a commercial landlord owning a number of properties.
- The Respondent admitted knowing about the tenancy deposit schemes yet failed to comply with them.
- The Respondent readily admitted having failed to comply with the Regulations for the Property and for the other properties when deposits are taken.
- The Applicant's deposit was unprotected for the duration of the PRT.
- The Applicant was unable to take advantage of the process provided by the schemes for recovering her deposit or resolving any dispute.
- The Applicant was ultimately not prejudiced by the Respondent having repaid the deposit in full.
- The Tribunal is satisfied that the Respondent did not comply with Regulation 3 of the Regulations and that his failure is a serious one which requires to be marked accordingly.
- The Tribunal determined that the Respondent must pay to the Applicant an amount equivalent to two times the deposit in terms of Regulation 10 of the Regulations, being £650.

Decision

The Respondent is ordered to pay to the Applicant a sum of £650.

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.

Gillian Buchanan

Legal Member/Chair

24 October 2019.

Date