

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/19/2388

**Re: Property at 2nd Floor Right, 43 Ashvale Place, Aberdeen, AB10 6QJ ("the
Property")**

Parties:

Mr Ray Stobbart, 34 Longmeadows, Sunderland, SR3 3SB ("the Applicant")

**Northeast Property Development, 34 Viewfield Road, Arbroath, Angus, DD11
2DN ("the Respondent")**

Tribunal Members:

Gillian Buchanan (Legal Member)

Decision

At the Case Management Discussion ("CMD") the Applicant was in attendance and the Respondent was represented by Mr Chris Barrington.

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

- The Respondent leased to the Applicant the subjects at 2nd Floor Right, 43 Ashvale Place, Aberdeen, AB10 6QJ ("the Property") in terms of an offer to let and acceptance thereof dated 9 and 14 January 2019. ("the Agreement").
- The Agreement stated that the tenancy would commence on 14 January 2019 and that the rent payable in terms thereof was £495 per month payable in advance.
- Paragraph 3(b) of the Agreement stated that at the start of the tenancy a security deposit of £495 would be paid to the Respondent and would be lodged with the Letting Protection Service. The Agreement said a Letting Protection Service reference number would be provided.
- The Applicant paid the deposit of £495 to the Respondent.

The Case Management Discussion

At the CMD the Applicant stated:-

- That he paid the deposit around 9-14 January 2019.
- That the deposit has still not been returned to him.
- That at the time of entering into the Agreement he worked at two locations in Aberdeen. His circumstances subsequently changed and he gave notice to the Respondent to vacate the Property.
- That he asked the Respondent about the deposit being returned and received no response.
- That he contacted the tenancy deposit scheme referred to in the Agreement but it had no record of the deposit.
- That he is familiar with the tenancy deposit arrangements in England but not in Scotland..
- That he contacted all three tenancy deposit schemes and none had any record of the deposit.
- That he gave the Respondent the opportunity to settle this matter before the application to the Tribunal was made.

At the CMD Mr Barrington for the Respondent stated:-

- That he had not paid the deposit into any tenancy deposit scheme.
- That when the tenancy agreement was signed he had a rapport with the Applicant and they discussed in the kitchen of the Property the problems with renting property such as paperwork and administration, the way tenants don't look after properties and so on.
- That he said to the Applicant that he would not be using a tenancy deposit scheme.
- That whilst aware of tenancy deposit schemes he was not aware that their use was a mandatory legal requirement.
- That his registration as a Landlord only lapsed at the end of September.
- That he is not currently renting out any properties.
- That he had been "played" by the Applicant who knows "the system".
- That the Applicant had given only 6 days notice to leave, was due rent, and treated the Property like a hotel with demands for items needed..
- That he is not a commercial landlord of residential properties in that he has the following properties:-
 - i. His own house in Arbroath;
 - ii. Shop premises from which his partner trades;
 - iii. A house for sale that he has been unable to rent out;
 - iv. The Property which he purchased 10 years ago as an investment and with the possibility of living there during the week if he moved to Aberdeen for work related reasons. He refurbished the Property and having not obtained employment in Aberdeen elected to rent it out. It is presently unoccupied.

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 landlord but has leased only the Property commercially.
- The Respondent admitted knowing about the tenancy deposit schemes but did not believe use of them to be a mandatory legal requirement.
- The Respondent readily admitted having failed to comply with the Regulations for the Property.
- The Applicant's deposit was unprotected for the duration of the Agreement and has not been refunded.
- The Applicant has been unable to take advantage of the process provided by tenancy deposit schemes for recovering the deposit or resolving any dispute about whether the deposit is due to be repaid.
- The Applicant has been prejudiced by the Respondent's failure to lodge the deposit in a tenancy deposit scheme.
- The Tribunal is satisfied that the Respondent did not comply with Regulation 3 of the Regulations and that its 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 £990.

Decision

The Respondent is ordered to pay to the Applicant a sum of £990.

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.Buchanan

 Legal Member/Chair

24 October 2019
Date