

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit
Schemes (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/21/1760

Re: Property at 7B Inverness Campus, Inverness, IV2 5NA (“the Property”)

Parties:

Mr Adam Bailey, 36 Greenbank Road, Tunstall, Stoke on Trent, ST6 7EY (“the Applicant”)

The University of the Highlands and Islands, Executive Office, 12B Ness Walk, Inverness, IV3 5SQ (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted in favour of the Applicant in the sum of £300.

Background

1. This is an application received in the period between 22nd July and 10th September 2021, made in terms of Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”). The Applicant is seeking an order for payment against the Respondent arising from their failure to lodge a tenancy deposit in respect of a tenancy of the Property. The tenancy commenced on 5th September 2020 and ended in or around June 2021. A tenancy deposit of £200 was paid was paid by the Applicant to the Respondent on 3rd August 2020. The deposit was paid into an approved tenancy deposit scheme on 19th March 2021.
2. By email dated 22nd October 2021, the Respondent's representative made written representations as follows:

At the time, the property and related deposits were managed by our representatives, Cityheart Living (Scotland) Ltd, Parkers Court,

Shipgate Street, Chester, Ch1 1RT. The £200 deposit was paid to them on 3rd August 2020 and paid into the Safe Deposit Scheme on 8th March 2021. In mitigation, Covid-19 presented a huge increase in administration for their accommodation team and their priority during this time was the safety and wellbeing of the students and their staff. It was an unprecedented time for their team as they had students' self isolating in all of our locations. In addition, their staffing levels were affected with people working from home in line with Scottish government advice. As a result, unfortunately the deposit upload was delayed. They did ensure that the deposit remained in the Cityheart Living Scotland client bank account at all times until it was transferred to the Safe Deposit Scheme.

The Case Management Discussion

3. A Case Management Discussion ("CMD") took place on 8th November 2021 by telephone conference. The Applicant was not in attendance and was represented by Mr Kevin Bailey. The Respondent was represented by Mr Doug Walmsley, Regional Manager.
4. It was agreed that the tenancy deposit had not been paid into an approved tenancy deposit scheme ("TDS"). Both representatives reiterated the submissions made in writing.
5. The Tribunal heard submissions as to the amount of any award to be made. Mr Bailey said he was content to leave this in the hands of the Tribunal, stating that he did not feel the Respondent had looked after the students well during the Covid-19 pandemic and it had not been a good experience for the Applicant. Mr Walmsley said these were unprecedented times. The Respondent only recently began to take tenancy deposits. Previously, they had taken advance rental payments, and would be reverting to that procedure, rather than continuing to take tenancy deposits.

Findings in Fact and Law

6.
 - (i) The tenancy deposit of £200 paid by the Applicant was not lodged with an approved tenancy deposit scheme and remained unprotected for a period of over six months, which was around two-thirds of the duration of the tenancy.
 - (ii) The Respondent has breached Regulation 3 by failing to pay the deposit into an approved tenancy deposit scheme timeously.

Reasons for Decision

7. The Regulations were put in place to ensure compliance with the tenancy deposit scheme, and to provide the benefit of dispute resolution for parties. The Tribunal considers that its discretion in making an award requires to be exercised by ensuring that it is fair and just, proportionate and informed by taking into account the particular circumstances of the case.
8. The Tribunal took guidance from the decision of the Upper Tribunal UTS/AP/19/0020 which states: *'Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals.'*
9. The Tribunal considered this to be a serious matter, with the deposit unprotected for a significant period of the tenancy; however, the Tribunal did not consider it to be a case at the most serious end of the scale.
10. The Tribunal took into account the mitigating circumstances put forward by the Respondent. However, the Tribunal felt that an organisation such as the Respondent, dealing with multiple tenants and accommodation, should ensure that they complied with their legal duties and responsibilities as a landlord, even in unprecedented times.
11. Taking all the circumstances into account, the Tribunal decided it would be fair and just to award a sum of £300 to the Applicant, which is one and a half times the tenancy deposit.

Decision

12. An order for payment in the sum of £300 is made in favour of the Applicant.

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.


Helen Forbes

Legal Member/Chair

8th November 2021
Date