

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under The Tenancy Deposit Schemes (Scotland) Regulations 2011 ("The Regulations") (Any reference to a Regulation refers to the Regulations).

Chamber Ref: FTS/HPC/PR/21/2178

Re: Property at Horseshoe Cottage, By Balmedie, AB23 8YB ("the Property")

Parties:

Mrs Hannah Smith, Mr Murray Smith, Horseshoe Cottage, By Balmedie, AB23 8YB ("the Applicant")

Mrs Lynda Evans, 27 Arnage Avenue, Ellon, AB41 9GL ("the Respondent")

Tribunal Members:

Andrew McLaughlin (Legal Member)

Background

The Applicant seeks an order under Regulation 10 for an award of three times the amount of a deposit paid consequent to the Respondent's alleged failure to register the deposit paid within 30 working days of the start of the tenancy, as required by Regulation 3.

The Application had called previously for a Case Management Discussion (CMD) by conference call at 2pm on 15 November 2021. The Applicants were both personally present. There was no appearance by or on behalf of the Respondent at that CMD. Case Management Notes and Directions had been produced in respect of that CMD and those should be considered alongside this decision.

The Case Management Discussion

The Tribunal had fixed another CMD which called by conference call today at 10am on 12 January 2022. That date had also been intimated to the Respondent but again it was only the Applicants that were in attendance and there was no appearance by or on behalf of the Respondent.

Since the last CMD the Applicants had lodged further documentation including emails and copies of various text messages.

The Tribunal discussed these documents with the Applicants. One email that seemed particularly relevant was an email from Martin & Co to the Applicants dated 9 November 2020 in which they indicated that they were taking over the management of the Property on behalf of the Respondent and asking if the Applicants were aware of the location or otherwise of any deposit paid over previously in respect of the tenancy.

The Applicants candidly confirmed at the CMD that this reflected conversations the Respondent had had with the Applicants directly in which she had stated that she did not know the status or whereabouts of any deposit paid over under the tenancy. The Applicants described these conversations as taking place in the weeks before the email from Martin & Co dated 9 November 2020.

The tenancy agreement produced with the Application was between the Applicants and Mr Philip Evans. It provided for a deposit of £700.00 to be paid in respect of a tenancy that commenced on 1 September 2017. The Applicant's claim was based on the fact that they say the deposit of £700.00 paid over should have been registered with an approved scheme within 30 workings days of the start of the tenancy but that it was not in fact lodged until 14 January 2021. The Applicants confirmed that they had paid over the deposit directly to Mr Philip Evans.

The Applicant's themselves admitted that when Mr Evans died the Respondent did not know the status of any deposit paid to her late husband and enquired with the Applicants about where the deposit was as referred to above. The Applicants were not sure if the Respondent ever did locate the deposit but in any event the sum of £700.00 was subsequently registered into an approved scheme on 14 January 2021.

Having heard from the Applicants and having considered the documentation placed before the Tribunal, the Tribunal made the following findings in fact.

Findings in fact

- I. The Applicants entered into a tenancy agreement in respect of the Property with the late Mr Philip Evans which commenced on 1 September 2017;*
- II. The Applicants were the tenants and Mr Philip Evans was the landlord;*
- III. The Applicants paid a deposit of £700.00 pursuant to the tenancy to Mr Philip Evans;*
- IV. Mr Philip Evans died on or around 27 May 2019;*
- V. The Respondent is the late Mr Evans' wife;*

- VI. *The Respondent was not a party to the tenancy agreement between the parties nor had any legal responsibilities in respect of the deposit paid to the late Mr Philip Evans;*
- VII. *On or around November 2020 the Respondent instructed letting agents to take over the management of the tenancy on her behalf in place of her late husband;*
- VIII. *The Respondent did not know the registration status or location of the deposit and enquired with the Applicants as to its whereabouts both personally and through Martin & Co as her agents;*
- IX. *A deposit of £700.00 was subsequently paid into an approved scheme on 14 January 2021;*
- X. *This deposit was ultimately returned to the Applicants in full by application by the Applicants to the approved scheme holding the deposit around November 2021;*
- XI. *There is nothing to suggest that the Respondent personally received the deposit which ought to have been registered earlier as per Regulation 3 or had any knowledge of the failure of said deposit to be registered in an approved scheme timeously by her late husband.*

Findings in law

Regulation 3 is in the following terms:

3.—(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—

(a) pay the deposit to the scheme administrator of an approved scheme; and

(b) provide the tenant with the information required under regulation 42.

(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.

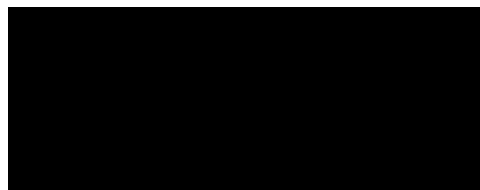
The Tribunal is not satisfied that the Respondent received any tenancy deposit as per Regulation 3. It was clearly the Respondent's husband who was the landlord at the start of the tenancy and who received the deposit. The Respondent cannot be held liable for the acts or omissions of another individual, regardless of any marital connection. It may be that the Applicant's claim should properly have been directed against the estate of

the late Mr Philip Evans (although any such claim would now be time-barred) but the Tribunal was not satisfied that the Respondent had breached any duties under Regulation 3.

The power of the Tribunal under Regulation 10 to make any award, is expressly predicated on the Tribunal being satisfied that there has been a breach of any duty imposed by Regulation 3. The Tribunal, not being satisfied that the Respondent has breached Regulation 3, therefore refuses the Application.

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.



Legal Member/Chair

13/01/2022

Date