



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”)

Chamber Ref: FTS/HPC/PR/21/2595

Re: Property at 34 Galashiels Road, Walkerburn, EH43 6AF (“the Property”)

Parties:

Ms Linda Watt, 37 Ladhope Vale, Galashiels, TD1 1BP (“the Applicant”)

Ms Hazell Morrell, Mr Peter Duke, Fern Cottage, 31 Townfoot, Stow Galashiels, TD1 2QN (“the Respondent”)

Tribunal Members:

Mary-Claire Kelly (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £400 should be made in favour of the Applicant.

Background

1. By application received on 12 November 2021, the applicant seeks an order in terms of Regulation 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”).
2. The following documents were lodged by parties:
 - form AT5
 - screenshot showing payment of £400
 - email correspondence between parties spanning the period from February to August 2021
 - Notice to quit
 - Section 22 notice
 - Email correspondence from Scottish Borders Council

Case Management Discussion (“cmd”) – teleconference- 17th January 2022

3. All parties attended the cmd. Parties confirmed that they had entered in a short assured tenancy agreement. The commencement date of the tenancy was 26th

August 2014. After an initial six-month term the tenancy continued on a month to month basis. A deposit of £400 had been received at the commencement of the tenancy.

4. The respondents had raised an issue in relation to the competency of the application in their written representations. The Tribunal dealt with this as a preliminary matter.
5. The respondents position was that a notice to quit was served on 23rd March 2021. The notice to quit provided two months' notice that the tenancy would terminate on 26th May 2021. The notice to quit was served with a section 33 notice which also gave two months' notice to the applicant that the landlord wished to recover possession of the property.
6. The respondents position was that the effect of the notice to quit was to terminate the tenancy agreement. The tenancy deposit regulations state that any application under regulation 9 must be made not later than 3 months after the tenancy had ended. The respondents had understood that the tenancy had ended upon the expiry of the notice to quit i.e. 26th May 2021. They therefore submitted that the present application was time barred.
7. The Tribunal advised that for the purposes of the tenancy deposit regulations the tenancy ends when the tenant no longer retains possession of the house. The Tribunal referred to section 16 of the Housing (Scotland) Act 1988:

s16 Security of tenure

(1)After the termination of a contractual tenancy which was an assured tenancy the person who, immediately before that termination, was the tenant, so long as he retains possession of the house without being entitled to do so under a contractual tenancy shall, subject to section 12 above and sections 18 and 32 to 35 below—

(a)continue to have the assured tenancy of the house; and

(b)observe and be entitled to the benefits of all the terms and conditions of the original contract of tenancy so far as they are consistent with this Act

8. The Tribunal explained that if the three-month period in regulation 9 was calculated from the time the notice to quit expired rather than the date when the tenant left the property, there would be a large number of tenants deprived of the remedy, as tenancy deposit issues usually came to light at the point of moving from the property.
9. The Tribunal then heard from parties on the application. The respondents advised that they had engaged the services of a letting agent when they were looking for a tenant. The letting agent had taken a deposit of £400 from the applicant at the commencement of the tenancy. The letting agent had paid £300 to the respondents after taking payment of their fees from the deposit sum. Ms Morrell gave evidence that the letting agents had not provided any information regarding the requirement to place the deposit in a relevant tenancy deposit scheme.
10. Ms. Morrell explained that she and Mr Duke had bought the property with the intention of renting it out. They had no other rental properties. Prior to the applicant, there had been approximately six previous tenants. She gave evidence that they had not had any previous disputes regarding deposits.

11. Ms Morrell advised that both she and Mr Morrell were retired. They had not relet the property since the respondent left.
12. Ms Morrell advised that she had not been aware of her duties under the 2011 Regulations when the applicant moved into the property. She had become aware of them a couple of years previously. She had mistakenly formed the view that as they deposit had not been placed in a scheme at the commencement of the tenancy there was little point in doing so as that would not remedy the breach. She had also thought that the regulations would not apply in this case as there was no intention to act unfairly with regards to the deposit and she thought that the regulations only applied when there was a dispute in relation to the deposit.
13. Ms Morrell confirmed that the deposit had been repaid in full on 29th September 2021. She advised that there were deductions she might have sought to make due to issues with the condition of the property but as the deposit had not been placed in a scheme she felt that she had to return the full amount. There was a delay in payment after the applicant moved out as Ms Morrell was waiting for the keys to be returned and to be provided with the applicant's bank details.
14. The applicant advised that she worked as a customer resolution adviser. She had been aware of the 2011 regulations since a previous tenancy. She advised that the property was hard to heat, and she often found it to be cold. There had also been a lack of ventilation in the bathroom.
15. The applicant gave evidence that she had been a good tenant and felt disappointed that the respondents had not complied with the regulations. She had felt worried that she might not get her deposit back in full when it came to light that a tenancy deposit scheme had not been used.
16. She confirmed that she had received the deposit back on 29th September 2021. She explained that there had been a delay in her returning the keys and providing bank details to the respondents. She could not be clear about the date those were provided but estimated that it was about two weeks after she left the property.
17. The respondents accepted that they had not complied with the regulations and expressed remorse about that. They had tried to maintain good relations with the applicant and had tried to help her find alternative accommodation – which Ms Morrell said was borne out in the emails lodged by the applicant between parties.

Findings in fact

18. Parties entered into a tenancy agreement with a commencement date of 26th August 2014.
19. A deposit of £400 was paid by the applicant at the commencement of the tenancy.
20. The applicant left the property on 31st August 2021.
21. The deposit of £400 was repaid to the applicant on 29th September 2021.
22. The deposit had not been placed in an approved tenancy deposit scheme as required in terms of regulation 3.
23. The respondents instructed a letting agent at the commencement of the tenancy.
24. The respondents were unaware of the regulations at the commencement of the tenancy.

Reasons for the Decision

25. The Tribunal took into account the parties written and oral submissions and the various documents lodged in advance of the cmd.
26. The Tribunal was satisfied that the respondent had failed to place the deposit in a suitable tenancy deposit scheme. Accordingly, regulation 10 applied. The Tribunal required to determine the level of award to be made under regulation 10 up to a maximum of three times the amount of the deposit.
27. The Tribunal took into account that the deposit had been unprotected for a period of seven years. The Tribunal took into account the amount of the deposit and the fact that the respondents did not own any other rental properties and was relatively inexperienced landlords. The Tribunal took into account that the respondent had engaged the services of a letting agent when the tenancy commenced who had passed the deposit to the respondent. It would have been reasonable to expect the letting agent to alert the respondents to their duties under the regulations, which they failed to do. The Tribunal noted that the respondents had repaid the deposit in full and had expressed remorse at their failure to adhere to the regulations which was due to a lack of knowledge.
28. The Tribunal accepted that the respondents' failure to lodge the deposit in a scheme had been a source of stress and inconvenience to the applicant and had been unsettling during the period when the applicant was trying to secure alternative accommodation.
29. Taking the above factors into consideration the Tribunal determined that the respondent's breach of the regulations was at the less serious end of the scale and in the circumstances an order in the sum of £400 was fair and just.

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.

Mary-Claire Kelly

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Legal Member/Chair

Date: 17th January 2022