



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

Chamber Ref: FTS/HPC/PR/21/2712

Re: Property at 3 Castlepark Green, Edinburgh, EH16 4GB (“the Property”)

Parties:

Mr Cameron Manning, 11 Silk House, Park Street, Falkirk, FK1 1RW (“the Applicant”)

**Ms Voijsava Suti, Flat 2 Heathcote Court, 39 Osborne Road, Windsor, SL4 3SS
 (“the Respondent”)**

Tribunal Members:

Jim Bauld (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment in the sum of Seven hundred pounds (£700) should be made in favour of the applicant

Introduction

1. In this application, the applicant seeks a payment order in terms of Regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the Regulations”) in respect of an alleged failure by the respondent to comply with those regulations. A Case Management Discussion (“CMD”) was set to take place on 17 December 2021. Intimation of the date and time of the CMD was sent to both parties

The Case Management Discussion

2. The applicant attended the CMD which took place by telephone conference call. the respondent was neither present nor represented

3. The tribunal explained the powers of the tribunal and provisions of the 2011 Regulations to the applicant. The tribunal explained to the applicant the maximum award which could be made in terms of the Regulations
4. The tribunal indicated that it would be entitled to utilise the power within regulation 17 of the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ("the tribunal rules") and that the tribunal could make a final decision at the case management discussion without remitting the matter to a further full hearing.
5. The tribunal asked the applicant what level he believed the award should be made. He indicated that he was content for the tribunal to make whatever award the tribunal thought was appropriate. On being asked by the tribunal, the applicant indicated that he was not aware of the respondent owning any other properties which were tenanted.

Findings in fact

6. A tenancy agreement was entered into between the parties which commenced on 15 August 2018
7. A deposit of £300 was taken by the respondent
8. The deposit was never paid into an approved tenancy deposit scheme
9. The tenancy ended on 17 September 2021
10. The deposit has never been repaid by the respondent to the applicant

Reasons for Decision

11. This application related to the failure of the Respondent to place a tenancy deposit within an approved tenancy deposit scheme. Landlords have been required since the introduction of the 2011 Regulations to pay tenancy deposits into an approved scheme within 30 working days of the commencement of the tenancy. In this case it was accepted that the Landlord had failed to do so. Accordingly she was in breach of the duties contained in Regulation 3 of the 2011 Regulations. Those duties are twofold. There is a requirement to pay the deposit to a scheme administrator and the requirement to provide a Tenant with specified information regarding the tenancy deposit. The Respondent failed in both duties.
12. Regulation 9 of the 2011 Regulations indicates that if a Landlord does not comply with any duty in regulation 3 then the Tribunal must order that a

Landlord makes payment to the Tenant of an amount “not exceeding three times the amount of the tenancy deposit”.

13. Accordingly in this case the Tribunal is required to make an order for payment. The only matter to be determined by the Tribunal is the amount of the payment.
14. In this case the Tribunal carefully considered the evidence which had been produced by the applicant. There was clear evidence that the respondent had failed to pay the tenancy deposit into the appropriate scheme for the whole period of the tenancy (a period of over three years). Emails had been produced from all these schemes confirming they held no deposit in respect of the tenancy
15. The Tribunal noted that in an Upper Tribunal decision (reference 2019 UK 39 UTS/AP/19/0023) that Sheriff David Bickett sitting on the Upper Tribunal had indicated that it was appropriate for the Tribunal to differentiate between Landlords who have numerous properties and run a business of letting properties as such, and a Landlord who has one property which they own and let out. The Sheriff indicated in the decision that it would be “inappropriate” to impose similar penalties on two such Landlords. In this case the respondent appeared to be a landlord who only had one property available for rent.
16. The Regulations were introduced to safeguard deposits paid by Tenants. They were introduced against a background of Landlords abusing their position as the holder of deposit moneys. The parliament decided that it should be compulsory to put the deposit outwith the reach of both the Landlord and the Tenant to ensure that there was a dispute resolution process accessible to both Landlord and Tenant at the end of a tenancy and which placed them on an equal footing. The Regulations make it clear that the orders to be made by Tribunals for failure to comply with the Regulations are a sanction or a penalty.
17. In this case, the Respondent was in clear and blatant breach of the Deposit Scheme Regulations. The tribunal considered whether it should make an award at the maximum range. The respondent had not attended the CMD nor provide any written representations to provide any mitigation of her failure to lodge the deposit in accordance with the Regulations
18. The tribunal accordingly considered that this was a significant breach of the regulations which required to attract a penalty towards the higher end of the available range. No explanation or mitigation had been offered to the tribunal by the landlord. It appeared she had simply ignored the provisions of the Regulations .
19. The tribunal was not persuaded that the award should be made at the maximum level available to the tribunal which based on the deposit being £300 would have been £900.. The tribunal took the view that the appropriate award should be £700 being approximately 80% of the maximum award available

Decision

The Tribunal awards payment of the sum of SEVEN HUNDRED POUNDS(£700) to be paid by the Respondent to 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.

Legal Member: Jim Bauld

Date: 17th December 2021

Jim Bauld

