

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 Section the Housing (Scotland) Act 2006 section 121 and Regulation 9 the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/22/2734

Re: Property at 20 Springfield, Dundee, DD1 4JE (“the Property”)

Parties:

Mr Jason Wong, Mr Jack Maciver, Mr Connor Twaddle, Mr Magnus Gray, Mr Lewis Williamson, 10 Polton Vale, Loanhead, Midlothian, EH20 9DF; 21 Damfield Road, Inverness, IV2 3LP; 27G Milnbank Road, Dundee, DD1 5QD; 27G Milnbank Road, Dundee, DD1 5QD; 9 West Bell Street, Flat 8, Dundee, DD1 1EX (“the Applicant”)

Mrs Dorcas Adesanya, 67 Allerford Road, London, SE6 3DG (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Landlord is in breach of her obligations in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“Regulation 3”). The Respondent shall make payment to the Applicant in the sum of £2310 (TWO THOUSAND THREE HUNDRED AND TEN POUNDS)

Background

1. The Tribunal received an application from the Applicant in terms of Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Rules 2017 which was dated 4th August 2022. The Application included a lease which detailed that a deposit of £2310 had been paid.
2. On 22nd September 2022, all parties were written to with the date for the Case Management Discussion (“CMD”) of 3rd November 2022 at 2pm by

teleconferencing. The letter also requested all written representations be submitted by 13th October 2022.

3. On 2022 , sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent by letterbox service. This was evidenced by the Certificate of Intimation dated 2022.
4. On 11th October 2022, Mr Paul Letley, Pavilion Proprieties emailed the Housing and Property Chamber. The email admitted that the breach of the Regulations had occurred and that it was the fault of Pavilion Properties. He explained in the email that the original date for the Applicants to move into the Property was to be 1st July 2021. However, the Property became free earlier and the Applicants moved in to it. The office had diarised the 28th July 2021 to lodge the deposit which would have been within 30 days had the tenants moved into the Property on 1st July 2022. A new check has been put into place to prevent this occurring again.

The Case Management Discussion

5. A CMD was held on 3rd November 2022 at 2pm by teleconferencing. The Applicant was represented by one of the Applicants, Mr Jason Wong. Mr Conner Twaddle was also present. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules.
6. Mr Wong did not remember Mr Letley's claim that they had moved in early. He did not think that the email correspondence that he had said that but was not in a position to completely dispute it. He had not submitted this to the Tribunal. The Tribunal noted that deposit had been lodged shortly after the 30 day period. However, matters would have been clearer had the Applicant or her representative attended the CMD.
7. The Tribunal considered that a one times fine was appropriate as there had been a breach which was admitted.

Findings and reason for decision

8. A Private Rented Tenancy Agreement commenced 2nd June 2021.
9. A deposit of £2310 was paid on 2nd June 2022.
10. The deposit was lodged with Safe Deposit Scotland on 28th July 2022 which is outwith 30 days from the start of the tenancy. This is a breach of the regulations.
11. The Respondent has failed to comply with the regulations to ensure that the deposit was lodged in an appropriate scheme within 30 days from the start of the tenancy. The Respondent's agent emailed to advise that a new stage of checks and measures have been implemented to prevent it occurring again. The deposit was lodged late but shortly after the expiry of the period. The

Tribunal noted that the Respondent's letting agent had accepted responsibility for the breach, however, the legal responsibility for the breach remains with the Respondent.

Decision

12. The Respondent has a duty under Regulation 3 to place the deposit in an approved scheme within the specified time but failed to do so. The Respondent's letting agent admitted the breach was due to a system error. They have since explained by email why the deposit was late and what steps had been taken to prevent such a situation happening again. The Tribunal decided that a fair, just and proportionate sanction would be to order the Respondent to pay the Applicant one times the amount of the deposit (£2310.00).

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. Miller

3rd November 2022

Legal Member/Chair

Date