



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

Chamber Ref: FTS/HPC/PR/23/0801

Re: Property at FLAT A, 512 KING STREET, ABERDEEN, AB24 5ST (“the Property”)

Parties:

Miss Kelly McRae, FIRST FLOOR LEFT, 86 BEDFORD ROAD, ABERDEEN, AB24 3LQ (“the Applicant”)

Mr Cameron Burt, Heathfield, Blairs, Aberdeen, AB12 5YP (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that there had been a breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011; and it made an order for payment against the Respondent in favour of the Applicant in the sum of £300.

Background

1. The Applicant submitted an application on 13 March 2023 under Rule 103 (Application for order for payment where landlord has not paid the deposit into an approved scheme) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.
2. The Applicant sought an order for payment on the basis that the Respondent was said to have breached the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”).

3. By decision dated 16 March 2023, a Convenor of the Housing and Property Chamber having delegated power for the purpose, referred the application under Rule 9 of the Rules to a case management discussion ("CMD").
4. Letters were issued on 27 April 2023 informing parties that a CMD had been assigned for 6 June 2023, which was to take place by conference call. In that letter, the parties were also told that they required to take part in the discussion and were informed that the Tribunal could make a decision on the application if the Tribunal has sufficient information and considers the procedure to have been fair. The Respondent was invited to lodge written representations by 18 May 2023. No written representations were received.

Case Management Discussion – 6 June 2023

5. The CMD took place by conference call. The Applicant and Respondent participated in the discussion. The Tribunal explained the purpose of the CMD. The Applicant explained that she paid the deposit of £325 shortly before the tenancy started. The tenancy ended on 20 January 2023, although the keys were returned earlier. The parties discussed an outstanding gas and electricity account and agreed that the Respondent would retain sums from the Applicant's deposit to cover the utility costs and return the sum of £81.83 to the Applicant. The Respondent paid that sum to the Applicant on 11 January 2023. The Applicant spoke to previous tenants of the Respondent and learned that their deposits had not been secured in an approved scheme, although they received return of their deposit from the Respondent.
6. The Respondent accepted that he had received a deposit of £325 from the Applicant and that he had not secured that in an approved scheme. The failure to secure the deposit was through naivety rather than a deliberate act. He held the Applicant's deposit in a separate bank account and in his mind, the Applicant's deposit was never at risk. This is the only rental property owned by the Respondent and he was ignorant of the 2011 Regulations. He has now familiarised himself with the regulations and has secured his current tenant's deposit in an approved scheme.

Findings in Fact

7. The parties entered into a private residential tenancy which commenced 1 March 2022.
8. The Applicant paid a deposit of £325 to the Respondent.
9. The Respondent did not secure the Applicant's deposit in an approved scheme.

Reason for Decision

10. The Tenancy Deposit Schemes (Scotland) Regulations 2011 set out a number of legal requirements in relation to the holding of deposits, and relevant to this case are the following regulations: -

Duties in relation to tenancy deposits

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.

Sanctions

9.– (1) A tenant who had paid a tenancy deposit may apply to the [First-tier Tribunal] 1 for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit. (2) An application under paragraph (1) must be made [...]2 no later than 3 months after the tenancy has ended.

10. If satisfied that the landlord did not comply with any duty in regulation 3 the [First – tier Tribunal] 1 – (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and (b) may, as the [First – tier Tribunal] 1 considers appropriate in the circumstances of the application, order the landlord to – (i) pay the tenancy deposit to an approved scheme; or (ii) provide the tenant with the information required under regulation 42.

11. It was agreed that the Applicant paid a deposit of £325 to the Respondent at the outset of the tenancy. It was accepted that the Respondent did not secure a deposit for the Applicant in an approved scheme. The Tribunal determined that the terms of regulation 10 were engaged, and the Tribunal must order that the Respondent pay the Applicant an amount not exceeding three times the amount of her tenancy deposit. The amount to be paid required to be determined according to the circumstances of the case, the more serious the breach of the regulations the greater the penalty.
12. The Tribunal considered that its discretion in making an award requires to be exercised in a manner consistent with the case *Jenson v Fappiano (Sheriff Court) (Lothian & Borders, Edinburgh)* 28 January 2015. It must be fair, just and proportionate and informed by taking account of the particular circumstances of the case.
13. The Tribunal considered 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.”

14. There was nothing before the Tribunal to suggest that the Respondent had any fraudulent intent or deliberately failed to secure the Applicant's deposit. The sum involved was relatively modest. The Respondent was candid about his failure to comply with the 2011 Regulations and has secured his current tenant's deposit. The Tribunal took account of the payment of an agreed sum by the Respondent to the Applicant a number of days before the end of the tenancy. For all of these reasons, the Tribunal considered that the penalty should be at the lower end of the scale. In respect of the failure to comply with the 2011 Regulations, a sanction of THREE HUNDRED POUNDS (£300.00) is appropriate in this case.

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.

N. Irvine

Legal Member/Chair

6 June 2023

Date