



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

Chamber Ref: FTS/HPC/PR/19/3125

**Re: Property at Ground Floor Flat, 170 Pittencrieff Street, Dunfermline, Fife,
KY12 8AW (“the Property”)**

Parties:

**Miss Huohuo Zhang, Room 803 - Building 4, Huangguan Road - Shuikou Town,
Huicheng District - Huizhou City, Guangdong Province, China (“the Applicant”)**

**Mr David Shedden, 35 Main Street, Blackridge, Bathgate, EH48 3RJ (“the
Respondent”)**

Tribunal Members:

Ms H Forbes (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for payment should be granted in favour of
the Applicant in the sum of £675, and that the Respondent must pay the tenancy
deposit of £450 to an approved tenancy deposit scheme.**

Background

By application made under Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Rules”) received between 2nd and 22nd October 2019, the Applicant applied for an order in terms of Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”). The parties entered into a tenancy agreement in respect of the Property which commenced on 12th September 2018 for a period of 10 months. A deposit in the sum of £450 was paid by the Applicant to the Respondent. At the end of the tenancy the Applicant discovered that the deposit had not been paid into an approved tenancy deposit scheme. The deposit was not returned to the Applicant. The Applicant included a copy of the tenancy agreement and copy correspondence from the three tenancy deposit schemes with her application.

Written representations were received from the Respondent on 4th December 2018. The Respondent included copies of text messages between the parties.

The Case Management Discussion

A CMD took place by teleconference on 18th December 2019. Both parties participated by telephone. The Applicant was represented by Mr Connor Wyse.

Mr Wyse set out the Applicant's case. This was a 10 month tenancy. A deposit was taken. The Respondent did not pay the deposit into an approved tenancy scheme. He, therefore, failed to carry out his duties. The deposit was not returned to the Applicant at the end of the tenancy.

The Respondent said he did not take a deposit. He took a 'security bond' and made it clear to the Applicant's mentor, with whom he had negotiated the terms of the lease, that he would not be paying the 'bond' into a scheme as he didn't understand or know anything about the tenancy deposit schemes. He referred to his productions, namely the text messages between the parties, and said he was aggrieved that the Applicant initially decided to agree to him withholding the sum of £300 from the 'bond' for damage to the Property. She then asked for the full £450 back and threatened that she would claim three times that amount. The Respondent said the situation had caused him stress and anxiety. Responding to questions from the Tribunal, the Respondent said he had understood that describing the deposit as a 'security bond' in the tenancy agreement relieved him of the necessity to pay the deposit into a scheme. The deposit had been paid by the Applicant's mentor.

In response, Mr Wyse stated that ignorance of the law was no defence. The Respondent took a deposit and, if he had lodged it with a scheme, the alleged issues with the Property could have been addressed. The Respondent had caused a great deal of trouble for the Applicant by not lodging the deposit. The deposit had been paid in cash by the Applicant. This was a serious case and three times the deposit should be awarded in respect of the Respondent's failure.

The Tribunal offered the Respondent the opportunity of an adjournment to allow him to take legal advice on this matter. The Respondent then said he accepted that he had not complied with the Regulations, and that issues relating to the condition of the Property, and past arguments between the parties, were not relevant to the case before the Tribunal. The Respondent said he would rather matters were dealt with at the CMD, without any further adjournment.

The Respondent said he had been letting the Property for 23 years. He had a few tenants during that time. Initially, he had not taken deposits, but latterly he had begun to do so, believing that he was taking a security bond rather than a deposit, thus avoiding the necessity of having to lodge the deposit in a tenancy deposit scheme. He had never had any problems with any other tenant.

Findings in Fact

1. The parties entered into a tenancy agreement in respect of the Property that commenced on 12th September 2018 for a period of 10 months.
2. A tenancy deposit of £450 was paid to the Respondent by the Applicant at the start of the tenancy.

3. The deposit was not lodged with an approved tenancy deposit scheme.
4. The deposit was not repaid to the Applicant by the Respondent.
5. The Respondent has been letting the Property for a period of around 23 years.
6. The Respondent has breached Regulation 3 by failing to pay the deposit into an approved tenancy deposit scheme.

Reasons for Decision

The Tribunal considered it was a serious matter that the deposit had not been lodged within 30 days of the tenancy commencing, as required by Regulation 3. The Respondent was not a first-time landlord and he was aware of the Regulations, although he had not lodged a deposit with any of the approved schemes in the past. The Tribunal took into account the fact that the deposit was unprotected for the duration of the tenancy, which was a period of 10 months. In all the circumstances, the Tribunal considered it fair and reasonable to grant an order in the sum of £675, which is one and a half times the deposit. The Tribunal also considered it reasonable to order that the deposit should be lodged with an approved tenancy deposit scheme to allow both parties to take advantage of the independent adjudication process.

Decision

An order for payment is granted in favour of the Applicant in the sum of £675. The Respondent is ordered to lodge the deposit of £450 with an approved tenancy deposit scheme.

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.

Helen Forbes

Legal Member/Chair

18th December 2019

Date