



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 (“The Regulations”)

Chamber Ref: FTS/HPC/PR/19/3333

Re: Property at 48 Clayhills Drive, Dundee, DD2 1SX (“the Property”)

Parties:

Dr Fahmin Khaleque, 18 Cobiehill Road, Edinburgh, EH4 5DY (“the Applicant”)

Dr Moontarin Ansar, 47 Clovis Duveau Drive, Dundee, DD2 5JA (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:

This matter called for a Case Management Discussion at 2pm on 19 December 2019 at Caledonian House, Greenmarket, Dundee, DD1 4QX.

The Applicant was personally present. The Respondent was not present or represented. The Respondent had the Application and details of today’s Case Management Discussion intimated to him by Sheriff Officers on 19 November 2019. The Respondent therefore had fair notice of today’s hearing.

A letter had been received from Boyles solicitors dated 23 November 2019 which indicated that they did not intend to attend on behalf of the Respondent but simply to make representations on his behalf. The letter stated that the Respondent would not be attending as *“his wife had an essential hospital appointment”*.

The Tribunal noted that no request for a postponement of the Case Management Discussion had been made either for the Respondent to appear

personally or for him to instruct a representative who would attend the hearing.

The Tribunal therefore elected to continue with the Case Management Discussion.

The Application was in respect of Regulation 9 of the Regulations and it was stated that a deposit of £675.00 had been paid by the Applicant to the Respondent pursuant to a tenancy agreement between the parties regarding the Property dated 3 April 2018. The tenancy was said to have ended on 12 October 2019 and this Application was submitted on 4 August 2019. The Application was therefore submitted within the timescales provided in Regulation 9 (2).

Whilst the tenancy agreement stated that the deposit was for £649.00, it was apparent from the email and text message correspondence between the parties that in actual fact the deposit received was £675.00. In one text message the Respondent appears to state directly to the Applicant: *"I was proposing to return £600.00 rather than £675.00"*.

The text messages between the parties make it apparent that the Applicant appears to have been continually pressing the Respondent to provide evidence of having registered the deposit received with an approved scheme. No such evidence appears to have been forthcoming. It seems apparent from the messages that that the deposit was not registered with an approved scheme meaning that the Respondent was in breach of the obligations incumbent on him to register the deposit with an approved scheme within 30 days of the start of the tenancy as per Regulation 3.

The correspondence received from Boyles solicitors makes no reference to this obligation which is the essential essence of the Application. The letter from Boyles still seeks to refer to the sum of £75.00 being held back by the Respondent from the Deposit. It does not in any way address the substance of the Application or offer any defence to the Application or mitigation.

The Tribunal considers that as the Respondent is in breach of Regulation 3, the Tribunal should go on to consider what order to make in respect of Regulation 10.

The Applicant invited the Tribunal to make an award in her favour of three times the value of the deposit. The Tribunal noted no mitigation or representations suggesting any alternative approach that should be followed had been put forward by the Respondent or his Representative.

The Tribunal decided to grant the Application as sought.

The Tribunal, in terms of Regulation 10 (a), orders the Respondent to pay to the Applicant the sum of £2,025.00, being a sum equal to three times the value of the deposit received of £675.00.

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.

Andrew
McLaughlin

Legal Member/Chair

19/12/19

Date