

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 regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011.

Chamber Ref: FTS/HPC/PR/18/1338

Re: Property at 12 Lochlee Terrace, Dundee, DD4 7LN ("the Property")

Parties:

Miss Pauline Stark, Burns Cottage West, 39 Mains Loan, Dundee, DD4 7AF ("the Applicant")

Mr Graham Burns, L/1/2, 60 Dundee Road, Broughty Ferry, Dundee, DD5 1HY ("the Respondent")

Tribunal Members:

Martin McAllister (Legal Member) and Linda Robertson (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent is ordered to pay the sum of £1,550 to the Applicant.

Background

This is an application under regulation 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The Application is dated 29TH May 2018 and it states that the Applicant's deposit for her tenancy of the Property was not lodged with a scheme administrator of an approved scheme in terms of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (the 2011 Regulations). The Application had previously been considered by the Tribunal: a case management discussion on 13th August 2018, a Hearing on 21st September 2018 and a Hearing on 5th November 2018.

Directions were made on 5th November 2018 under regulation 16 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The Applicant was required to provide printouts or screenshots between the parties regarding the deposit and the end of the tenancy, evidence to show the last rental

payment made for the tenancy and written confirmation of her enquiries with the three Deposit Schemes. The Respondent was required to provide the receipt issued by the Deposit Scheme on payment of the deposit into the scheme and a copy of the notification to the Tenant issues in terms of regulation 42 of the 2011 Regulations.

Preliminary Matters

We postponed commencement of the Hearing until 10.05 am but the Respondent did not appear. The Applicant was present.

We noted that the Respondent had not complied with the Notice of Directions issued on 5th November.

The Applicant had complied with the said Notice.

Findings in Fact

1. The Applicant had been a tenant in the Property until the lease terminated on 31st March 2018.
2. The tenancy had commenced on 1st October 2017.
3. The Applicant had paid £775 to the Respondent as a deposit and this payment had been made on 15th September 2017.
4. The Respondent had not lodged the deposit with an approved deposit scheme.
5. The deposit was returned to the Applicant on 14th May 2018.

Reasons for Decision

1. We had sight of the tenancy agreement which stated inter alia "The landlord shall lodge the deposit with Safe Deposits Scotland within 30 working days of commencement of the tenancy and provide the tenant with the prescribed information in accordance with the duties under the Tenancy deposit Scheme Regulations 2011 as amended. The deposit will be held by SafeDeposits Scotland throughout the tenancy."
2. The Applicant had provided a copy of an email from SafeDeposits Scotland dated 14th November 2018 which stated that they had been unable to find a deposit account for the Property.
3. The Applicant showed us emails from Letting Protection Service dated 14th November 2018 and MyDeposits Scotland dated 22nd November 2018 which both stated that they did not have deposit accounts.
4. We saw screenshots of text messages between the parties. On 14th April 2018 the Respondent texted the Applicant in the following terms " yes of course its in a tenancy deposit scheme. My Solicitor has it all in hand thanks." In response to a text from the Tenant asking for the tenancy deposit certificate code the Respondent stated " no you don't need to know that Pauline. I have already said it's in the hands of my solicitors.
5. The Applicant stated that she had the deposit returned to her by cheque from solicitors acting on behalf of the Respondent.
6. The Applicant said that she had paid £1162 to the Respondent on 15th September 2017 to secure the tenancy of the Property. She said that £775 of this was in respect of the deposit and she did not know what the other money was for. She showed us bank statements vouching this.

7. The Applicant showed bank statements confirming payment of the rent during the tenancy. These payments were made to Claire Stewart who she said was the partner of the Respondent. She said that the Respondent had instructed her to make the payments to her.
8. The Applicant said that at no time had the Respondent given her any documentation in respect of the deposit, its whereabouts etc.
9. The Applicant said that she endured great stress because of the delay in the return of the deposit and also the fact that she did not know its whereabouts. She said that she had to borrow money from family members to enable her to pay a deposit for a private rented flat which she took on after she had moved from the Property.

Discussion and Decision

We found the Applicant credible. We accepted that a deposit of £775 had been paid and had eventually been returned by the Respondent.

In terms of the tenancy agreement the deposit should have been placed with SafeDeposits Scotland. We had an email from that scheme stating that it had not been lodged with them. We had evidence from the other two schemes that no deposit had been lodged with them. The fact that the deposit was returned to the Applicant by means of a cheque from the Respondent's solicitor reinforced the position that the deposit had not been lodged in accordance with the 2011 Regulations. We also saw the text from the Respondent in which he stated that the deposit had been properly lodged. This would appear to be untrue.

We accepted that the matter must have caused stress to the Applicant.

The 2011 Regulations exist to protect tenants. Not only do they provide for protection of the deposit but also an adjudication scheme should parties not agree with regard to return of the deposit.

In the case before us the deposit had eventually been returned and there had been no dispute with regard to any issues with regard to retention for damages etc.

In terms of regulation 10 of the 2011 Regulations we must make an order for payment if we are satisfied that a landlord has not complied with the required duty in respect of the regulations. We are satisfied that the Landlord has not complied and that an order requires to be made. In coming to a view on the amount we took into account that the deposit had been returned. We consider it appropriate that the Respondent be required to pay the sum of £1,550 being twice the level of the deposit.

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.

Martin McAllister

Legal Member/Chair

15/1/19
Date