



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Chamber Ref: FTS/HPC/PR/19/3392

Re: Property: 43 Stewartfield Gardens, East Kilbride, Glasgow G74 4GN (“the Property”)

Parties:

Mr Allan Browne, 30 Dundas Court, East Kilbride, Glasgow G74 4AN (“the Applicant”)

Mr Raymond O’Mara, 14 Dunbeath Grove, West Craigs, Blantyre, Hamilton, G72 0GL (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member)

1. This Hearing was a Case Management Discussion (hereinafter referred to as a “CMD”) fixed in terms of Rule 17 of the Procedure Rules and concerned an Application under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (hereinafter referred to as “the Deposit Regulations”). The purpose of the Hearing being to explore how the parties dispute may be efficiently resolved. The purpose of the hearing was explained and it was understood a final decision could be made.

2. Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £1350 in terms of Regulation 10(a) of the Regulations should be made.

3. Attendance and Representation

The Applicant was present and unrepresented.

The Respondent was not present.

4. Preliminary Matters

- The Legal Member asked the Applicant to clarify his enquiries made to deposit schemes.
- The Applicant confirmed that he had contacted all 3 deposit schemes and had used their online search facilities and found that his deposit was not protected by any of the schemes. His new letting agency, Benson had also made checks for him and they could not ascertain that the deposit had been protected.
- The Applicant confirmed he was seeking a compensation order relating to a breach of the Deposit Regulations in regards a failure to register a tenancy deposit and a failure to provide information in terms of Regulation 3 and 42 of the Deposit Regulations.
- The Tenancy commencement date was April 2019. The tenancy ended in September 2019 following a repossession order being granted against the Respondent.

5. The Case Management Discussion

- The Applicant set out his position for the purpose of the CMD summarised as follows;
 - The initial deposit was £675 made on commencement of the tenancy and paid to the Respondent.
 - Regulations 3 of the Deposit Regulations provide that the Respondent has 30 working days to register the deposit with a deposit protection scheme and to provide tenants with the information required in terms of regulation 42 of the Deposit Regulations.
 - The Applicants position was that the Respondent did not do any of this as he said he received no information and the deposit was not protected and registered with a scheme.
 - The Applicant said he contacted the Respondent by phone, text and email at the end of the tenancy and he had no reply.
 - The Applicant then contacted the deposit schemes and could not find that his deposit had been registered.
 - The Respondent had to leave the property at short notice, could not use his deposit to secure another property and has not had his deposit returned.

6. Findings in Fact

- The Tenancy commenced in April 2019 and ended in September 2019 following a Repossession Order for the property being granted against the Respondent.
- The Respondent did not provide information timeously as required in terms of Regulation 42 of the Deposit Regulations at the commencement of the Tenancy.

- The Respondent did not register the tenancy deposit in connection with the property within 30 days of commencement of the Tenancy.
- The Respondent breached the Deposit Regulations in connection with the property, namely Regulations 3 and 42 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

7. Reasons for Decision

1. Rule 17 of the Procedure Rules provides that a Tribunal can do anything at a CMD which it may do at a Hearing, including making a decision. The Legal Member was satisfied that the Tribunal had everything before it that it would require in order to make a decision having regard to the Overriding Objective.
2. The Application was brought timeously in terms of regulations 9(2) of the Deposit Regulations.
3. In terms of Deposit Regulation 10 if the FTT is satisfied that the landlord did not comply with any duty detailed in Regulation 3 then the FTT must order a landlord to pay the tenant or tenants an amount not exceeding three times the amount of the tenancy deposit.
4. The FTT was satisfied that the Respondent did not register the deposit with a deposit protection scheme as required by Regulation 3.
5. The FTT was also satisfied that a deposit of £675 had been paid by the Applicant to the Respondent.
6. The Respondent did provide the information to the Applicant as required by Regulation 42 of the Deposit Regulations.
7. If the FTT was satisfied a breach of the regulations had occurred the FTT had to make an order in terms of Regulation 10.
8. In terms of Regulation 10 the FTT is obliged to make an order up to 3 times the deposit of the applicants to the respondent.
9. When considering the Order and level of sanction the FTT must have regard to the severity of the breach and any mitigating factors.
10. The deposit was unsecured throughout the tenancy. The period of unsecurity was the duration of the tenancy and the circumstances of having to leave the tenancy quickly without return of the deposit were a significant inconvenience to the Applicant.
11. In the case of *Jenson v Fappiano* 2015 G.W.D 4-89 in relation to the amount of such an Award under regulation 10 of the Regulations it was noted that a judicial analysis of the nature of the non-compliance was required and a value

attached to reflect a sanction which was fair and proportionate and just given the circumstances.

12. It was further noted that the Sheriff said in said case that the value was not the starting point of three times the deposit minus the mitigating factors it was what was fair and proportionate in the exercise of balanced judicial discretion.
13. The Court of Session in Tenzin v Russell 2015 Hous. L.R 11 held that any payment in terms of Regulation 10 of the Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case.
14. The FTT was therefore of the view that an Award should be made in the middle end of the scale as the deposit had been unsecured throughout the tenancy and there had been significant inconvenience and prejudice to the Applicant and no explanation or response had been given for the breach. Accordingly in balancing the circumstances it found the Applicant entitled to an award of 2 times the deposit to the sum of £1350.

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.

Karen Kirk


Legal Member/Chair

Date