

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 Section 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/PR/18/0936

Re: Property at 86 Hilton Heights, Aberdeen, AB24 4QF (“the Property”)

Parties:

Miss Lynnda Webster, 23 Wemyss Crescent, Monifieth, Angus, DD5 4RA (“the Applicant”)

Mrs Emma Sheldon, 13/5 East Pilton Farm Crescent, Edinburgh, EH5 2GG (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to payment by the Respondent in the sum of ONE THOUSAND AND TWENTY POUNDS (£1020.00)

Background

1. By application dated 8 March 2018 the Applicant applied to the Tribunal for an order under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) complaining that the Respondent had failed to comply with Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). In support of her application the Applicant provided the Tribunal with copies of the tenancy agreement, correspondence addressed to the Respondent with Post Office tracking confirmation, email to the Respondent and a series of text messages between the Applicant and the Respondent.
2. Following further correspondence between the Tribunal administration and the Applicant a legal member with delegated powers by Notice of Acceptance

dated 20 August 2018 accepted the application and it was referred to a Tribunal to fix a Case Management Discussion.

3. A Case Management Discussion was arranged to take place on 1 October at 2.00pm at The Credo Centre, 14-20 John Street, Aberdeen.
4. Intimation of the Case Management Discussion was given to the Applicant by post on 5 September 2018 and to the Respondent by Sheriff Officers on 7 September 2018.

Case Management Discussion

5. The Case Management Discussion took place on 1 October at the Credo Centre 14-20 John Street Aberdeen. It was attended by the Applicant. The Respondent did not attend nor was she represented. She had not submitted any written representations to the Tribunal.
6. The Applicant confirmed that she had resided at the property since September 2016 and moved out on 8 March 2018 a period of approximately eighteen months.
7. According to the Applicant although the Tenancy Agreement had made reference to her deposit of £340.00 being lodged with an approved Tenancy Deposit Scheme it had not in fact been lodged with any of the three approved schemes.
8. The Applicant said that she had contacted all three scheme administrators by telephone and they had no record of her or the Respondent having a deposit lodged with them.
9. The Applicant said that as a result of finding out that the deposit had not been lodged she had written to the Respondent on 31 December 2016 and 20 January 2017. She said the Respondent had told her she had not received those letters so she had sent a further letter by recorded delivery post on 3 November 2017, a copy of which along with the Post Office tracking receipt had been lodged with the papers. She said that she had never received a reply to that letter.
10. The Applicant said she had raised the issue of the deposit in text exchanges with the Respondent but again these had not been answered.
11. The Applicant said that when she left the property she had asked for her deposit back but had never received it.
12. The Applicant said that she was aware that another Tribunal had made an award against the Respondent for failing to lodge a deposit and believed that another tenant had also applied to the Tribunal for a similar finding.

13. The Applicant said she left it to the Tribunal to determine the appropriate level of compensation to be paid if satisfied that the Respondent had breached Regulation 3 of the 2011 Regulations.

Findings in Fact

14. The parties entered into a Short Assured Tenancy Agreement that endured from 1 September 2016 until 8 March 2018.
15. At the commencement of the tenancy the Applicant paid a deposit to the Respondent of £340.00.
16. The Respondent did not lodge the deposit in an approved Tenancy Deposit Scheme in accordance with Regulation 3 of the 2011 Regulations.
17. The Applicant communicated this failing to the Respondent in correspondence sent by recorded delivery post on 3 November 2017.
18. The Respondent did not respond nor did she lodge the deposit in an approved scheme.
19. The Respondent did not return the Applicant's deposit at the end of the tenancy.

Reasons for Decision

20. The Tribunal decided to proceed with the Case Management Discussion in the absence of the Respondent in terms of Rule 29 of the Rules. The Respondent had been given proper notice of the Case Management Discussion and had not provided the Tribunal with any reason for her non-attendance.
21. The Tribunal accepted the verbal information provided by the Applicant along with the documentary evidence as sufficient to conclude that the Respondent had failed to lodge the Applicant's deposit in an approved scheme throughout the duration of the tenancy.
22. The Tribunal also accepted that the Respondent had not repaid the Applicant's deposit to her.
23. The Tribunal was satisfied that the Respondent was in breach of Regulation 3 of the 2011 Regulations.
24. The Tribunal was also satisfied that the application was made by the Applicant timeously in terms of Regulation 9 and that being the case the Applicant was entitled to an award in terms of Regulation 10 of an amount not exceeding three times the amount of the deposit.

25. The Tribunal took the view that this was a serious breach of the 2011 Regulations. The Respondent must have been aware of her obligations to lodge the deposit in an approved scheme as the Tenancy Agreement prepared by the Respondent made specific reference to do so.

26. Furthermore the Applicant had drawn the Respondent's failure to lodge the deposit in correspondence and the Respondent had still done nothing about it.

27. In the circumstances the Tribunal was satisfied that it was appropriate to award the Applicant the maximum amount provided in the 2011 Regulations that of three times the deposit being a total of £1020.00.

Decision

28. The Tribunal finds the Applicant entitled to payment by the Respondent in the sum of ONE THOUSAND AND TWENTY POUNDS (£1020.00).

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.

Graham Harding

Legal Member/Chair

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Date

1 October 2018