

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”) and Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/PR/21/0215

Re: Property at 5 Bracoden Terrace, Gardenstown, AB45 3ZF (“the Property”)

Parties:

Mr John William Strang and Mrs Sarah Strang, residing at 14 Smith Road, Banff, AB45 1BN and formerly residing at 5 Bracoden Terrace, Gardenstown, AB45 3ZF (“the Applicants”)

Mr Michael Hay, Invermax Cottage, The Grange, Keith, AB55 6SN (“the Respondent”)

Tribunal Member:

Ms. Susanne L. M. Tanner Q.C., Legal Member and Chair

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that an order must be made in terms of Regulation 10 of the 2011 Regulations requiring the Respondent to pay to the Applicants the sum of ONE THOUSAND THREE HUNDRED AND FIFTY POUNDS (£1350.00) Sterling

Procedural background

1. On 23 January 2021, the Applicants made an application (“the Application”) to the tribunal in terms of Rule 103 of the 2017 Rules, namely an application for an order for payment where the landlord (the Respondent) has failed to carry out duties in relation to tenancy deposits.

2. The Applicant attached to the Application:
 - 2.1. A Private Rented Tenancy agreement dated 4 February 2019;
 - 2.2. Copy screen shots of What's App messages; and
 - 2.3. A PDF dated 26 November 2020.
3. On 9 February 2021, the Application was considered by a legal member acting with the delegated power of the Chamber President and further information was requested from the Applicants.
4. On 11 February 2021, the Applicants provided additional information.
5. On 25 February 2021, the Application was considered by a legal member acting with the delegated power of the Chamber President and accepted for determination.
6. On 8 March 2021, the tribunal notified the parties that the Application had been referred to the tribunal and that a Case Management Discussion ("CMD") teleconference had been fixed for 9 April 2021 at 1400h by teleconference, which both parties were required to attend. Parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application. Parties were advised that if they did not attend the CMD, this would not stop a decision or order from being made by the tribunal if the tribunal considered that it has sufficient information before it to do so and the procedure has been fair. The Respondent was invited to submit any written representations he wished by 29 March 2021. The Application paperwork and notification of the teleconference was served on the Respondent by Sheriff Officers on 8 March 2021.

Case Management Discussion ("CMD") – 9 April 2021 at 1400h – by teleconference

7. Both Applicants attended the CMD.
8. The Respondent did not attend the CMD or make any contact with the tribunal. The tribunal was satisfied that the requirements of Rule 24(1) regarding giving notice of a hearing had been duly complied with and proceeded with the application upon the representations of the parties present and all the material before it, in terms of Rule 29.
9. The tribunal chair explained the nature and purpose of the CMD.

10. Mrs Strang stated that the Applicants had paid a deposit of £450 to the Respondent when they moved into the property in January 2019 and that they dealt directly with the landlord in relation to all tenancy matters.
11. Mrs Strang stated that during the tenancy, the property was put up for sale. They found that out as a result of a surveyor coming to the house, following which they had called the landlord and the landlord confirmed to them, when asked, that the property was being sold. The landlord gave them a six month notice letter but they found another property and moved out earlier. Mrs Strang stated that she emailed the landlord with 28 days' notice of intention to leave and that she did not hear back until a week later. She stated that the landlord said that he accepted the date for the end of the tenancy. She stated that they actually gave him the keys back earlier than expected and that the end date should have been 27 March 2021. She stated they had given the keys back on 20 March 2021.
12. Mrs Strang stated that the deposit was paid by bank transfer at the start of the tenancy. As they confirmed in writing in response to a request from the tribunal, they are unable to produce bank statements because they went bankrupt so their bank account got closed down and they had to open a new one.
13. Mr Strang said that the Respondent did not give a receipt for the deposit when it was paid and had not provided them with proof of lodging it in a scheme at any time.
14. As proof that the deposit had been paid and not lodged, Mrs Strang referred to the lodged messages from What's App between 19 and 21 January 2021. In these, the Respondent first states that the deposit is in a bank account and he cannot give them details for data protection reasons. When she pointed out that it should be lodged in a scheme, he then said that this wife had a lodge it in a scheme, "Deposits Scotland" and that he could not provide details because of data protection. He then offered to pay it in cash if they needed it. Mrs Strang sent further messages and there was no response from the Respondent.
15. Within the What's App messages, Mrs Strang referred to an email sent on 21 January 2021. She stated that it was sent attaching a letter provided on the advice of Citizens Advice to give the landlord information about putting the deposit into a scheme. A copy of the letter dated 21 January 2021 was provided to tribunal and considered.
16. Mrs Strang stated that the Respondent did not reply to the email and letter. She stated that she phoned the Respondent after she had phoned all the deposit schemes to ask them and they said that they had no record of it on their system.

She stated that when she told him that there was no record with any scheme, he had said that it would be under his wife's name. She stated that she called the schemes again. They said that when they type in the address the deposit should come up and they said that no deposit was coming up for that address. She stated that she spoke to him again and he said it was with Scottish Landlords' Registration. She stated that she knew that it did not hold deposits but she called them anyway. They told her that registration for landlords was with them and they do not hold deposits. She only wanted to ring them so that she could tell the landlord. However, he ignored all phone calls and messages after that. She stated that she did ring the Council to see if he has a registered landlord and they said that he was.

17. The tribunal chair noted that the tenancy agreement lodged with the application appears to be incomplete as there is no section dealing with rent and no section dealing with deposit. Mrs Strang stated that that is all they got from the landlord and that he had taken the hard copy and said that he would provide a copy, which he had not done. This version was on Mr Strang's phone and was all they had been provided with.
18. Mrs Strang stated that there was no mention of the deposit after the end of the tenancy. She stated that they did not ask to get the deposit back because they did not pay their last rent on 1 March 2021 because they needed the money for the current property that they are in. She stated that it was not agreed in advance with the landlord because there was no communication at that time. She stated that the landlord did not actually meet them so that they could hand the keys back. Mrs Strang stated that she is assuming that their deposit was used against outstanding rent but the landlord has not confirmed this. She stated that the Property had so many problems with it such as mould and smoke alarms. She stated that if she had paid the last month's rent she does not know if they would have got any deposit back.
19. Mr and Mrs Strang stated that they are seeking the maximum sanction because the landlord did not do what he was meant to do by law and has not produced any defence. They referred to their prior correspondence with him and stated that he had not been willing to attend the Case Management Discussion. Mrs Strang stated that they moved in in January 2019 and moved out in March 2021 and that their deposit has never been protected, even after they raised the issue.

Findings in Fact

20. The tribunal makes the following findings in fact:

- 20.1. The Applicants and the Respondent entered into a Private Residential Tenancy agreement for the Property which started in January 2019.
- 20.2. Prior to or at the start of the tenancy, the Applicants paid a deposit of £450.00 to the Respondent.
- 20.3. No receipt was issued by the Respondent to the Applicants.
- 20.4. The prescribed information in terms of Regulation 42 of the Regulations was not issued to the Applicants by the Respondent at any time.
- 20.5. The deposit was not lodged by the Respondent in a deposit protection scheme at any time.
- 20.6. The Applicants moved out of the Property on 20 March 2021.
- 20.7. The tenancy ended on 27 March 2021.
- 20.8. When the second Applicant asked the Respondent between 19 and 21 January 2021 about which deposit scheme their deposit was lodged in, the Respondent first told them that it was in a bank account and he could not take a screen shot as it was data protected; then told them that his wife had lodged it with "Deposit Scotland" and he could not provide details for data protection reasons; and then offered it in cash if they needed it.
- 20.9. The Applicants sent a letter to the Respondent on 21 January 2021 asking about protection of their deposit and outlining his legal obligations as a landlord and the Respondent did not reply.
- 20.10. Between January 2021 and the end of the tenancy, the Applicants had a number of phone calls with the Respondent about the tenancy deposit, in which he first told them they had to check under his wife's name with all the schemes and in another such call he told them that it was with Landlord Registration Scotland.
- 20.11. The Applicants' deposit is not being held by any of the tenancy deposit schemes in Scotland.

20.12. The Applicants did not receive their deposit back at the end of the tenancy and no formal agreement was reached regarding its retention by the Respondent, but they accept that it could be offset meet rent arrears for the last month of the rental in respect of the payment which they missed on 1 March 2021.

21. Discussion

21.1. The tribunal took account of the Applicants' written and oral submissions. The Respondent has failed to engage in the tribunal process since being served with documentation and there were no defence submissions to take into account.

21.2. In assessing the appropriate amount for a payment order, the tribunal took account of the following: the fact that the Applicants' deposit was unprotected for a period of around two years and two months and that the deposit should have been protected within 30 working days of the start of the tenancy; the fact that the prescribed information had never been provided to the Applicants; the fact that the Respondent has provided the Applicants with contradictory and untrue information about their deposit on a number of occasions and that he has taken no steps to lodge the deposit, even when the matter has been drawn to his attention in messaging, by telephone and in a letter outlining his legal obligations was sent on 21 January 2021; the fact that the Respondent provided inaccurate information to the Applicants about being unable to give the Applicant details of the scheme due to data protection reasons; the fact that the Respondent has since variously told the Applicants it is in a bank account, that his wife is dealing with it, that it is with "Deposit Scotland" and that he can give it to them in cash. The Applicants have contacted all three deposit schemes, twice, as a result of the Respondent's unreasonable behaviour in first advising them that they would need to give his wife's name after the second Applicant told him that no scheme had a record of lodging; the fact that had the deposit been lodged by him at any time, a deposit protection certificate would have been issued and that the only inference to be drawn is that it has never been lodged by him in any scheme; the fact that no defence has been lodged and that the Respondent has failed to attend.

21.3. For the reasons outlined and on the basis of the findings in fact, the tribunal decided to make an order for payment by the Respondent to the Applicant of the sum of £1350.00, which represents three times the tenancy deposit of £450.00 and is the maximum sum which can be awarded. That sum was considered to be reasonable in all of the circumstances.

21.4. The tribunal chair informed the parties that the Payment Order could be enforced by the Applicants against the Respondent after the expiry of the permission to appeal period.

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.

Susanne Tanner

9 April 2021

Ms. Susanne L M Tanner Q.C. _____
Legal Member/Chair