



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/19/2301

Re: Property at 73 Methilbrae, Methil, Fife, Scotland, KY8 3LS (“the Property”)

Parties:

**Miss Angela Keddie, 29 Anderson Street, Kirkcaldy, Fife, KY1 2AQ
 (“the Applicant”)**

**Mr Mark Henderson, Chapel Ness, Lalathan Farm, Kennoway, Fife, KY8 5SG
 (“the Respondent”)**

Tribunal Member:

Susanne L. M. Tanner Q.C. (Legal Member)

Decision

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 Applicant the sum of FIVE HUNDRED POUNDS (£500.00) STERLING

1. Procedural background

1.1. On 22 July 2019, the Applicant submitted an application (“the Application”) to the tribunal in terms of Rule 103 of the 2017 Rules.

1.2. The Applicant attached to the Application:

- 1.2.1. A copy of a "Short Assured Tenancy" agreement between the Applicant and the Respondent for the Property dated 24 September 2018 (signed by the Respondent but not signed by the Applicant).
- 1.3. On 24 July 2019, the Application was considered by a legal member of the tribunal acting under the delegated powers of the Chamber President. A request for further information was sent to the Applicant requesting that she provide confirmation of the end date of the tenancy.
- 1.4. On 29 July 2019, the Applicant provided text messages bearing to be to and from "Mark Henderson" suggesting an end date of 24 May 2019.
- 1.5. On 13 August 2019, the Application was considered by a legal member of the tribunal acting under the delegated powers of the Chamber President. A request for further information was sent to the Applicant requesting that she amend her Application, if she so wished, to seek compensation in terms of Rule 103; and to lodge a separate Application under Rule 111 seeking return of deposit monies and other amounts. The Applicant was advised that if she lodged two applications these would be conjoined and heard together.
- 1.6. On 28 August 2019, the Applicant amended the Application and submitted it to the tribunal. Within this Application she restricted her claim to seek the compensation available for an application made under Rule 103 for failure to lodge a tenancy deposit in an approved scheme and to provide the prescribed information.
- 1.7. On 18 September 2019, the Application was considered by a legal member acting under the delegated powers of the Chamber President. The Application was accepted for determination by the tribunal. The Applicant was informed by letter of 24 September 2019.
- 1.8. By letter of 9 October 2019, the tribunal notified the parties that the Application had been referred to the tribunal and that a Case Management Discussion had been fixed for 13 November 2019 at 1000h in Fife Voluntary Action, 16 East Fergus Place, Kirkcaldy, KY1 1XT. Parties were advised that they are required to attend. Parties were advised that the tribunal may do anything at a Case Management Discussion which it may do at a hearing, including making a decision on the application. Parties were advised that if they do not attend the Case Management Discussion, this will not stop a decision or order being made by the tribunal if the tribunal considers 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 30 October 2019. Service

on the Respondent was effected on 11 October 2019 by Sheriff Officers leaving the documents with Mary Henderson, mother of the Respondent, at Chapel Ness, Lalathan Farm, Kennoway, Fife, KY8 5SG. Mrs Henderson advised the Sheriff Officers that the Respondent had just gone on holiday for two weeks but that she would email the documents to him in order that he can submit written representations if he so wishes.

- 1.9. The Respondent did not submit any written representations up to and including the date of the CMD.
- 1.10. Following a request from the Applicant relating to her health, it was arranged that she could attend the Case Management Discussion by telephone conference call.
- 1.11. The Case Management Discussion took place on 13 November 2019 at 1000h, Fife Voluntary Action, 16 East Fergus Place, Kirkcaldy, KY1 1XT. The Applicant attended the CMD by Conference Call. The Respondent attended in person.
- 1.12. Reference is made to the Notes of the Case Management Discussion which were sent to parties by the tribunal's administration following the CMD.
- 1.13. During the CMD the Respondent admitted that he had failed to comply with the duty in Regulation 3 of the 2011 Regulations, to pay the Applicant's tenancy deposit into an approved scheme and to provide the required information under regulation 42 within 30 working days of the beginning of the tenancy on 24 September 2018. The Respondent admitted that he had received a tenancy deposit of £420.00 from the Applicant and had not lodged the Applicant's deposit in a statutory deposit protection scheme at any time during the tenancy, nor provided the required information to her.
- 1.14. Having heard from both parties, and considering the overriding objective of the tribunal, the CMD was continued to 11 December 2019 at 1400 to allow the Respondent, in response to his request, further time to seek legal advice relative to any additional submissions he wished to make prior to the tribunal determining the appropriate sanction for the admitted breach of the Regulation 3 duty. The Applicant was directed to participate by case conference call. The Respondent was directed to attend in person but the tribunal offered the facility of participating by Case Conference Call to the Respondent or any Representative that he instructs to appear on his behalf and he was asked to contact to the tribunal's administration in writing if he wishes to make any such request.

1.15. The Respondent was asked to notify the tribunal of the name and contact details of any representative he wishes to appoint to act on his behalf in the proceedings. The Respondent was advised that if he or any representative he appoints wish to submit any written representations they can be submitted by email to the tribunal's administration.

1.16. The tribunal issued Directions dated 13 November 2019 ordering the Respondent to provide before close of business 21 November 2019, a copy of any signed and dated Private Residential Tenancy agreement relating to the Applicant, the Respondent and the Property. This Direction arose as a result of oral representations by the Respondent during the CMD (which were disputed by the Applicant) that in addition to the Short Assured Tenancy agreement signed by both parties on 24 September 2018, the parties had also signed a Private Residential Tenancy agreement on the same date, a copy of which he stated was in his office.

1.17. There was no contact from the Respondent or any representative instructed on his behalf prior to the adjourned CMD on 11 December 2019 at 1400. The Respondent did not comply with the tribunal's Directions dated 13 November 2019.

2. Adjourned Case Management Discussion – Wednesday 11 December 2019 at 1400h, New Volunteer House, Kirkcaldy

2.1. The Applicant joined the CMD by conference call.

2.2. The Respondent attended personally at the CMD.

2.3. The tribunal chair asked the Respondent about his failure to comply with the Direction to produce the PRT agreement which he had stated to the tribunal had been signed by parties on 24 September 2018 and was in his office. The Respondent stated that at the time of the first CMD he had thought that it was in his office. Having checked the position, Mr Henderson advised that he was mistaken about there being a second tenancy agreement. The only tenancy agreement with the Applicant is the one from 24 September 2018.

2.4. The tribunal chair invited submissions from the Respondent, now that he had been given additional time to take legal advice on the matter.

2.5. The Respondent confirmed that he had had the opportunity to take legal advice and had a better understanding of the Regulations and his position. He stated

that he could better answer the questions that were being asked on the first occasion.

2.6. In relation to his portfolio, the Respondent stated that he has five properties in total. Four of the other properties have original tenants with tenancies dated prior to 1 December 2017 and are on the correct tenancy agreements. Those four other properties have no tenancy deposits in place. Tenants have either had the deposits returned previously or it was never taken. The Respondent stated that the Property currently has a private residential tenancy agreement with the current tenant, hence the Respondent's confusion at the last hearing about whether a PRT had been entered into with the Applicant. The Respondent further explained that the current tenant had a deposit taken although it was returned to her within the 30 working day period and the tenancy is ongoing. The Respondent stated that at the last CMD in relation to the Application he was unable to answer questions about his portfolio but now that he had taken advice he considered the above to be relevant and hoped that this had been given a clearer picture of his portfolio.

2.7. The Respondent stated that in the case of the Applicant's deposit, it was an oversight that the deposit was not lodged and it will not be repeated. He stated that at the start of the tenancy it was a rather hurried agreement and the Applicant was keen to get in.

2.8. The Respondent stated that the reason was that there was no apology earlier (except the drains issue in the previous civil case) was that at the previous CMD he was not in a position to answer the tribunal's questions and that is why there was no apology prior to this. He stated that for the record now, now that he has a full understanding, he realises that he is to blame and he apologises to the Applicant for any ill will or bad feelings that she may have in regards to how she has been treated. The Respondent also accepted that the Applicant has been deprived of her right to resolution of opposed deductions through the deposit scheme.

2.9. The Applicant was offered the opportunity to respond to what Mr Henderson had said and stated that she had nothing to add beyond what was said on the last occasion.

2.10. The issues of deposit deductions from the Applicant's deposit and return of the balance to the Applicant had been discussed in a separate civil application, in which the Applicant sought a payment order from the Respondent. The civil application was withdrawn at a Case Management Discussion on 13 November 2019, after the Respondent return £160.00 to the Applicant in respect of a deposit deduction for drains, which he accepted was

not an item due by the Applicant in terms of the tenancy agreement; the Applicant conceded that she was due to pay £100 rent arrears to the end of the notice period for the tenancy and that these could be deducted from the deposit; and the Applicant conceded that she could not claim sums from the Respondent in respect of items she elected to leave in the Property at the end of the tenancy as a goodwill gesture.

3. Findings in Fact

- 3.1. The Applicant and the Respondent entered into a tenancy agreement dated 24 September 2018 for the period commencing on 24 September 2018.
- 3.2. There was only one tenancy agreement entered into between the parties on 24 September 2018.
- 3.3. The Respondent produced the tenancy agreement which was signed by the parties.
- 3.4. The tenancy agreement specified that the deposit of £420.00 would be taken and would be paid into a tenancy deposit scheme and that the deposit or part of the deposit would be refunded to the Applicant within the timescales as laid out in the 2011 Regulations.
- 3.5. The Respondent knew or ought to have known of the duties in Regulation 3 of the 2011 Regulations, which were also contained in the tenancy agreement produced by him.
- 3.6. The Applicant paid a deposit of £420.00 in cash to the Respondent on or about 24 September 2018.
- 3.7. The tenancy ended on 23 May 2019.
- 3.8. The Applicant requested return of her deposit at the end of the tenancy.
- 3.9. The Respondent made deductions from the deposit before returning the balance to her.
- 3.10. The Applicant did not have the opportunity to challenge the deposit deductions through a deposit protection scheme.
- 3.11. The Application to the tribunal was made on 22 July 2019 which was within three months of the end of the tenancy.
- 3.12. The Respondent did not lodge the Applicant's deposit with any of the deposit protection schemes in Scotland at any time.

- 3.13. The Applicant's deposit was held in the Respondent's bank account until partial repayment was made on 13 November 2019.
- 3.14. The Applicant did not receive her full deposit back from the Respondent following the end of the tenancy, despite requests for the same.
- 3.15. The Applicant required to raise a civil application with the tribunal to seek return of contested deductions from her deposit by the Respondent.
- 3.16. The Respondent has a portfolio of properties which are let to residential tenants.
- 3.17. The Property was the only property let by the Respondent in September 2018, in respect of which a deposit was taken from a tenant.
- 3.18. The Respondent became aware of the duty to lodge a tenancy deposit in terms of the 2011 Regulations on or about 9 October 2019 when he received notification of the Application and related civil application from the tribunal.
- 3.19. The Respondent has apologised to the Applicant for his failure to lodge the deposit and for depriving her of the right to dispute the deposit deductions through a deposit protection scheme.

4. Findings in Fact and Law

- 4.1. The Respondent failed to comply with the duties imposed on him by Regulation 3 of the 2011 Regulations.
- 4.2. The Applicant's deposit should have been lodged with a tenancy deposit protection scheme within 30 working days of 24 September 2018 and the Applicant should have been provided by the Respondent with the prescribed information in respect of deposit protection within the same timescale.

5. Discussion

- 5.1. The tribunal took account of the parties' written and oral submissions; and documentary evidence.
- 5.2. Because the tribunal was satisfied that the Respondent failed to comply with Regulation 3 of the 2011 Regulations, the tribunal must order the Respondent to pay the Applicant an amount not exceeding three times the amount of the tenancy deposit of £420.00. The tribunal had regard to the fact that the Respondent admitted his failure to lodge the tenancy deposit after tribunal proceedings were raised by the Applicant but not until the CMD on 13 November 2019. Having taken legal advice, the Respondent apologised to the Applicant at the second CMD on 11 December 2019. The tribunal took account

of the fact that the deposit was unprotected for the period of around nine months from September 2018 until May 2019, when it should have been lodged within 30 working days of the start of the tenancy; and the prescribed information should have been provided to the Applicant within the same period. The tribunal took account of the fact although the Respondent had a portfolio of properties, this Property was the only one for which the Respondent took a deposit from a tenant at the time. The tribunal also took account of the fact that the Respondent's stated position was that he did not become aware of the duties in Regulation 3 of the 2011 Regulations until he received the Application paperwork and notification from the tribunal's administration on or about 9 October 2019. However, the tribunal also took account of the fact that the tenancy agreement produced by the Respondent and signed by the parties contained a paragraph in which it was stated that the Applicant's deposit would be lodged with a tenancy deposit scheme in the required timescale and return of the deposit being dealt with through such a scheme and the Applicant should have known of the duties under Regulations at the time that the tenancy deposit was taken. The tribunal took account of the fact that the Applicant lost the opportunity to claim her deposit back via a deposit protection scheme or to challenge any proposed deductions after the end of the tenancy in May 2019, which is one of the purposes of the statutory deposit protection schemes. The Applicant did not receive return of her full deposit from the Respondent as he retained sums for repairs to drains and rent arrears. The Applicant required to raise a civil application with the tribunal in order to seek a payment order in respect of the retained sums. That matter did not settle until 13 November 2019, some six months after the end of the tenancy, after the Respondent accepted that he had no legal right to retain the sum claimed for drain repairs and an agreement was reached between the parties about rent arrears for the notice period to the end of the tenancy.

5.3. For the reasons outlined, the tribunal decided to make an order for payment by the Respondent to the Applicant of £500.00.

5.4. The tribunal chair informed the parties that the Payment order could be enforced by the Applicant against the Respondent after the expiry of the permission to appeal period.

6. **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

11 December 2019

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