

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 Regulations 9 & 10 of the Tenancy
Deposit Schemes (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/19/2734

Re: Property at 155 Clepington Road, Dundee, DD3 7SN ("the Property")

Parties:

Miss Leonie Nicole Brett, 1/0 59 Main Street, Dundee, DD3 7EY ("the Applicant")

Mr Darren Palmigiani, 155 Clepington Road, Dundee, DD3 7SN ("the Respondent")

Tribunal Members:

Ewan Miller (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Applicant should be granted an order for payment against the Respondent in the sum of TWO HUNDRED AND FIFTY POUNDS (£250) ONLY

Background

The Respondent was the owner of the Property. He had let the Property to the Applicant under a lease granted in May 2015. The lease had come to an end in or around the end of May/beginning of June. The Applicant alleged that the Respondent had failed to lodge the deposit timeously within an approved scheme as required by the Regulations.

The Tribunal had before it the following information:-

- The Applicant's application to the Tribunal received 29 August 2019;
- Copy of the relevant parts of the lease between the parties relating to the Property

- Written representations and bank statements from the Respondent's agent dated 4 December 2019

Case Management Discussion ("CMD")

The Tribunal held a CMD at Dundee on 16 December 2019 at Caledonia House, Greenmarket, Dundee at 2pm.

The Applicant was not present nor represented. The Respondent was not able to attend due to work commitments but was represented by Ms Tanya Royale of Messrs Baillie Shepherd, Solicitors, Dundee

Both parties had been notified of the date of the CMD and there appeared to be no reason to the Tribunal why it should not proceed to make a decision.

Findings in Fact

The Tribunal found the following facts to be established:-

- The Respondent was the owner of the Property;
- The Respondent had let the Property to the Applicant in May 2015;
- A deposit of £500 had been paid by the Applicant to the Respondent in May 2015;
- The deposit was not placed in an approved scheme in accordance with the Regulations until April 2019;
- The deposit had been repaid in full to the Applicant, notwithstanding there were rent arrears at termination of the tenancy.

Reasons for the Decision

The Tribunal noted that the Respondent did not dispute that he had failed to lodge the deposit within 30 days of the commencement of the tenancy as required by the Regulations. Accordingly there was no dispute by the Respondent's agent that there had been a breach and that an element of penalty would require to be imposed.

The Respondent's agent submitted that there were mitigating circumstances. She highlighted that this was the only rented property owned by the Respondent. He had now moved in to it and would not be re-letting it. He did not own any other tenanted property. Whilst his agent accepted that it was not a defence, she submitted that this was simply a case of the Respondent being unaware of the Regulations rather than it being a deliberate attempt to ignore or flout the Regulations. She apologised on his behalf to the Tribunal for his oversight.

The Respondent's agent had submitted copies of the Respondent's bank account that related to the Property. This showed that the deposit had been lodged in his account. Since the start of the tenancy the Respondent had barely touched this account. The amount in the account had grown steadily and by the end of the tenancy there was in excess of £43,000 in the account. Whilst she accepted that this did not mean the monies had been "safe", nonetheless in her submission it showed

that the Respondent had not used the money for his own purposes. From a practical standpoint, it was clear that the money had been available for repayment at all times during the terms of the tenancy.

Towards the end of the tenancy, the Respondent had become aware of the tenancy regulations. In his agent's submission, as soon as he became aware of this he lodged the deposit in an approved scheme. A copy of the Certificate was produced from April 2019.

The agent also submitted text messages from May/June 2019 between the parties in which the Applicant acknowledged there had been rent arrears (the agent also produced evidence to the fact that there was a separate application to the Tribunal by the Respondent seeking recovery of the rent arrears). Despite there being rent arrears which the deposit could have been offset against, the Respondent had allowed full repayment of the deposit to the Applicant. The Applicant had therefore not suffered any loss, and in fact had gained from the Respondent allowing this.

The Tribunal was aware of the dictum in *Jenson v Fappiano* 2015, which highlighted the requirement to look at the whole circumstances surrounding the breach of the Regulations in coming to a decision on the level of penalty to be imposed. The Tribunal took the view that whilst there had, clearly, been a breach of the Regulations, there were significant mitigating circumstances. The Tribunal accepted that, on the balance of probability, the Respondent was an occasional landlord that had simply been unaware of the Regulations, he had apologised and rectified the matter on becoming aware of it. In practical terms the monies had not been at risk and he had allowed the full return of the deposit even when he would have been entitled to deduct it against rent arrears.

In the overall circumstances, the Tribunal took the view that the failure fell at the very lowest end of the spectrum and a modest penalty should be imposed, compared to the possible penalty of 3x the deposit amount. Taking in to account all the facts and circumstances the Tribunal was of the view that £250 was an appropriate penalty.

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.

E. W

Legal Member/Chair

Date

16/12/19