



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

Chamber Ref: FTS/HPC/PR/20/1173

Re: Property at 2 Sorbie Farm Cottages, Ardrossan, KA22 7NP (“the Property”)

Parties:

Miss Rhona Morrison, Flat 0/2, 11 Beaconsfield Road, Glasgow, G12 0PJ (“the Applicant”)

Mr Alan Hogarth, Sorbie Farm, Ardrossan, KA22 7NP (“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. The hearing took place by teleconference due to the covid-19 pandemic.

2. Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £1100 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 present and unrepresented.

4. Preliminary Matters

There were no preliminary matters raised.

5. The Case Management Discussion

- The Applicant set out her position for the purpose of the CMD summarised as follows;
 - The initial deposit was £550 made on 8th May 2019 prior to the commencement of the tenancy on 1st June 2019 and paid to the Respondent by bank transfer.
 - 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 Applicant's position was that neither of these regulations were complied with.
 - The Applicant's position was that the Respondent did not do any of this as he said after the tenancy had ended that the money's were a holding fee which she recalls was mentioned once but thereafter was not mentioned again.
 - The Applicant referred to text messages lodged which said that the deposit would be put into an approved scheme.
 - The Applicant said she contacted the Respondent at the end of the tenancy seeking the deposit and same had not been received to date.
 - The Applicant said she felt the behaviour of the Respondent regarding the deposit was such that she sought an amount of 3 times the deposit given the failures.
- The Respondent set out his position for the purpose of the CMD summarised as follows;
 - The Respondent commenced his submission by stating the amount of money paid on 8th May 2019 was a holding fee as he had wanted to rent the property out from 1st May 2019 and the tenancy did not start to 1st June 2019. He said that the Applicant owed gas monies for a calor gas delivery to the property on 27th January 2020.
 - The Respondent later in the discussion when the Legal Member referred to the tenancy agreement between the parties which states that the deposit for the property was £550 adopted the position that if the tenancy agreement said that it was a deposit then he would accept it was.
 - The Respondent said that he accepted that it was a mistake not to put the deposit into a registered scheme.
 - The Respondent made further submissions about the gas bill he was of the view the Applicant was liable for. He said he had not progressed same as the Applicant had been a perfect tenant but that he would now take steps to do this.
 - The Respondent said further he did not follow the law but believes he behaved amicably and instead acted in good faith.

6. Agreed Facts

- Both parties agreed the Tenancy commenced on 1st June 2019.
- Both parties agreed the Tenancy Agreement referred to a deposit of £550 to be paid for the property.
- Both parties agreed the amount of £550 paid by bank transfer on 8th May 2020 was a deposit. The Respondent initially considered the deposit was a holding fee but then told the Tribunal given the tenancy agreement between the parties that he was of the view the money was a deposit.
- Both parties agreed that 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 said this was because he had mistaken the monies.
- Both parties agreed the Respondent did not register the tenancy deposit in connection with the property within 30 days of commencement of the Tenancy.

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. The sufficiency of facts agreed by parties allowed a decision to be made. No further evidence not already before the Tribunal was referred to by parties.
2. The Application was brought timeously in terms of regulations 9(2) of the Deposit Regulations.
3. The Tenancy Agreement contains a clause explain a deposit was paid of £550 for the property. The Applicant paid this amount by bank transfer before the commencement of the tenancy in June 2020.
4. 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.
5. The FTT was satisfied that the Respondent did not register the deposit with a deposit protection scheme as required by Regulation 3.
6. The FTT was also satisfied that a deposit of £550 had been paid by the Applicant to the Respondent.
7. The Respondent did provide the information to the Applicant as required by Regulation 42 of the Deposit Regulations.
8. If the FTT was satisfied a breach of the regulations had occurred the FTT had to make an order in terms of Regulation 10.

9. 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.
10. When considering the Order and level of sanction the FTT must have regard to the severity of the breach and any mitigating factors.
11. The deposit was unsecured throughout the tenancy. The period of unsecurity was the duration of the tenancy. The Applicant have had to raise proceedings to seek recover of the tenancy.
12. 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.
13. 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.
14. 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.
15. 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. Accordingly in balancing the circumstances it found the Applicant entitled to an award of 2 times the deposit to the sum of £1100.

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.



Legal Member/Chair

**18.8.2020
Date**

