



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under The Tenancy Deposit Schemes (Scotland) Regulations 2011 ("The Regulation")

Chamber Ref: FTS/HPC/PR/23/0378

Re: Property at 14 Mull, St Leonard's, East Kilbride, G74 2DX ("the Property")

Parties:

Mr Christopher McSorley, 14 Mull, St Leonard's, East Kilbride, G74 2DX ("the Applicant")

Mrs Pauline Watson, 55 Caravelle Gardens, East Kilbride, G74 4FN ("the Respondent"); Mr Jeff Livingstone, Landlord Specialist Services Scotland. "the Respondent's Representative."

Tribunal Members:

Andrew McLaughlin (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent had breached her obligations in respect of the Regulations and awarded the Applicant the sum of £400.00 under Regulation 10.

Background

[1] The Applicant seeks an award under Regulation 10 on account of the Respondent having failed to register the Applicant's deposit with an approved scheme as required by Regulation 3 within the time scales required. The Respondent accepted ultimately that a deposit had been paid to her in October 2015 and had not been registered in an approved scheme until the breach was brought to her attention by the Applicant in July 2022.

[2] A Case Management Discussion (CMD) had taken place on 6 June 2023 and case management orders had been made regulating the progress of the Application.

[3] A hearing took place by conference call at 10 am on 28 August 2023. The Applicant was present. The Respondent was also present together with her representative, Mr Livingstone of Landlord Specialist Services Scotland.

[4] Neither party had any preliminary matters to raise and both indicated that they were content with the Tribunal commencing the Hearing. The Tribunal heard evidence from the Respondent and the Applicant. Each party had the right to cross-examine the other and the Tribunal asked questions of both parties also.

[5] Having done so, the Tribunal made the following findings in fact;

Findings in Fact

- I. *The parties entered into a tenancy agreement whereby the Respondent let the Property to the Applicant by virtue of a tenancy agreement which commenced when the Applicant took occupation of the Property on 5 October 2015;*
- II. *The Respondent is a nurse and had lived in the Property previously. She decided to let it out when she moved in with her partner;*
- III. *The Respondent has no other investment properties;*
- IV. *The Respondent clearly didn't know what she was doing when trying to set up the tenancy documentation. The Respondent used styles clearly meant for English tenancies which had been downloaded from the internet. The Respondent had never educated herself about the Regulations and only ever heard of them for the first time when challenged about the matter by the Applicant in or around July 2022;*
- V. *The Applicant claims that he paid a deposit of £395.00 which was made up of a bank transfer of £200.00 and a further cash payment a few days later which brought the total up to £395.00;*
- VI. *The Respondent denies ever receiving any cash from the Applicant. The Respondent is of the view that only the sum of £200.00 was received as a deposit;*
- VII. *The Respondent accepts breaching her obligations under the Regulations in any event in not registering the deposit she acknowledges was received;*

- VIII. *There are conflicting accounts of the amount of the deposit received. The Applicant says that there was a meeting where cash was handed over. The Respondent denies this ever happened. The Tribunal prefers to rely on the amount stated to have been paid in the tenancy agreement between the parties- which is the sum of £395.00.*
- IX. *The Respondent has subsequently registered this sum with an approved scheme;*
- X. *The Tribunal concludes that the Respondent has therefore breached Regulation 3 by failing to register the deposit of £395.00 into an approved scheme within 30 working days of receipt;*
- XI. *When the Respondent was informed that she had breached the Regulations, the Respondent paid the sum claimed of £395.00 into the approved scheme notwithstanding her position that this whole sum was never in fact paid to her;*
- XII. *The Respondent, when confronted with her error, therefore took immediate action to correct her mistake and register the deposit.*

Reasons for Decision

[6] Having made the above findings in fact, the Tribunal conducted a judicial exercise of considering the whole facts and circumstances of the case and considering what award, if any, would be appropriate to make under Regulation 10.

[7] Having done so, the Tribunal decided that the breach was at the lower end of the spectrum. The Respondent had taken steps to fix her mistake as soon as she knew about it. The Tribunal decided to order that the Respondent pay the Applicant the sum of £400.00.

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.

A McLaughlin

Legal Member/Chair

28 August 2023

Date