



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

Chamber Ref: FTS/HPC/PR/23/1706

Re: Property at 35 Wharf Street, Montrose, DD10 8BD (“the Property”)

Parties:

Miss Breidge Labrom, 118D High Street, Montrose, DD10 8JE (“the Applicant”)

Mr John Grimes, Alexandra Grimes, 116 Murray Street, Montrose, DD10 8JG; (“the Respondents”)

Tribunal Members:

Richard Mill (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order be granted against the Respondents for payment to the Applicant of the sum of Four Hundred and Twenty Five Pounds (£425)

Introduction

This is an application under Rule 103 and Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Service of the application and intimation of the Case Management Discussion (CMD) was effected upon the respondents by Sheriff Officers on 22 June 2023.

The CMD took place by teleconference on 2 August 2023 at 11.30 am. The applicant and the first named respondent joined the hearing and represented their own interests.

Findings and Reasons

The property is 35 Wharf Street, Montrose DD10 8BD. The applicant is Miss Breidge Labrom who is the former tenant. The respondents are Mr John Grimes and Mrs Alexandra Grimes who are the former landlords.

The parties entered into a private residential tenancy in respect of the property. The rent stipulated was £425 per calendar month. The applicant paid £425 by way of deposit.

The applicant vacated the property on 14 March 2023. At the end of the tenancy the respondents initially repaid the sum of £400 to the applicant in respect of the deposit paid. Following a further request being made, the remaining £25 was also paid to her. The whole deposit has been returned.

The applicant complains that the deposit which she paid was not protected in an approved scheme in terms of the Regulations

The applicant has not evidenced direct communications with the three tenancy deposit schemes operating in Scotland to confirm that they did not receive her deposit and protect it. However, the applicant relies upon an email which she received from Hazel Adam, Private Landlord Registration Officer, Housing Strategy Team of Angus Council which she received on Monday 22 May 2023 which confirms that she spoke to, and received an email from, the respondents who admitted that the money which the applicant paid as a deposit was not paid into an approved scheme. The tribunal found this email communication chain from an officer of the Local Council to be credible and reliable and attached significant weight to it.

In any event, the respondents do not dispute the fact that the deposit was not protected. The respondents position is that it was a mistake and that they had forgotten to lodge the tenancy deposit. They state that the issue was an oversight and also provided other explanations regarding factual circumstances which had an impact upon their failure to protect the deposit. The first respondent had a hospital admission and the applicant had been occupying more than one property belonging to the respondents.

The tribunal was satisfied that the landlords have not complied with the requirements of the 2011 Regulations and in particular did not lodge the deposit paid into an approved scheme. The duties of landlords are contained within Regulation 3. This requires the landlord who has received the tenancy deposit in connection with the relevant tenancy to pay the deposit to a relevant scheme administrator from an approved scheme within 30 working days of the beginning of the tenancy.

The tribunal was satisfied that the respondents failed to comply with the duty in Regulation 3. Regulation 10 requires the tribunal to make an Order against the

respondents to pay to the applicant an amount not exceeding twice the amount of the tenancy deposit.

The tribunal considered all relevant circumstances prior to making any Order under Regulation 10. The respondents are operating as a commercial letting agent and therefore ought to know the relevant regulations and obligations which exist. They own a large number of rental properties.

The public require to have confidence that residential landlords are operating fairly and that their deposits are secured in accordance with the law in force in Scotland.

The applicant has however ultimately not suffered any loss in this matter as she has received return of the full deposit. There are some mitigating circumstances.

In all the circumstances, the tribunal ordered that the respondents pay to the applicant the sum of one times the amount of the tenancy deposit ie a total of £425. This is fair and proportionate in all of the circumstances.

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.

Richard Mill

2 August 2023

Legal Member/Chair

Date