



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

Chamber Ref: FTS/HPC/PR/23/2302

Re: Property at 11 Inchkeith Drive, Dunfermline, KY11 4HW (“the Property”)

Parties:

Mrs Rona Hutchison, 11 Inchkeith Drive, Dunfermline, KY11 4HW (“the Applicant”)

Mr Mark Coles (or Mark Christie-Coles), 72 Grampian Road, Rosyth, K11 2EY (“the Respondent”)

Tribunal Members:

Nairn Young (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

- Background

This is an application for an order for payment of a sanction for an alleged failure on the part of the Respondent to meet his duties under regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (‘the Regulations’), as the Applicant’s landlord in receipt of her tenancy deposit. It called for a case management discussion at 2pm on 21 September 2023, by teleconference. The Applicant was represented on the call by Mrs Grace Walker of Frontline Fife. The Respondent was on the call in-person, supported by his wife.

- Findings in Fact

The relevant facts in this case are not in dispute, as follows:

1. The Applicant paid a deposit of £500 to the Respondent in terms of a private residential tenancy agreement concerning the Property, at some point in September or October 2019.
2. The Respondent did not pay the deposit into an approved scheme and did not comply with any of the other duties incumbent on him under regulation 3 of the Regulations.
3. The Respondent only owns one let property.
4. The Respondent was unaware of his duties under regulation 3 until this application was raised.
5. The tenancy agreement used in regard to the Applicant wrongly purports to be a short assured tenancy,
6. The Respondent paid the deposit into an approved scheme around one month prior to the case management discussion.
7. The Respondent made a tentative approach to the Applicant to discuss settlement of this application, by referring to possible mediation.

- Reasons for Decision

8. The Respondent admits a complete failure to carry out the steps required of him under regulation 3. He states that he was ignorant of these duties.
9. The Tribunal considers that a failing of this sort is a serious matter and noted that the Applicant's deposit went unprotected for around four years as a

result. The Respondent has also shown a concerning lack of attention to the legal requirements of letting out the Property, having also failed to issue the Applicant with the correct form of lease and accompanying paperwork. These points suggested to the Tribunal that a sanction at around the mid- to high-level of the scale was appropriate.

10. In mitigation, the Tribunal noted that the Respondent is not a large-scale landlord and that the impact of his ignorance was thereby somewhat limited. There had not been any practical prejudice to the Applicant, who remains in the Property: the deposit now having been paid into an approved scheme. The Respondent did make some attempt to settle the matter, once the application was raised, albeit this was rather limited.

11. Taking all these points into account, the Tribunal considered that a sanction of one-and-a-half times the deposit (i.e. £750) was fair.

- Decision

Order made for payment by the Respondent to the Applicant of the sum of SEVEN HUNDRED AND FIFTY POUNDS STERLING (£750).

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.

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Nairn Young
Legal Member/Chair

21 September 2023
Date