



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

Chamber Ref: FTS/HPC/PR/19/3658

Re: Property at 16 Mayburn Avenue, Loanhead, EH20 9EU (“the Property”)

Parties:

Mr Ronald Hastings, 11 Mansfield Road, Balmullo, St Andrews, KY16 0DQ (“the Applicant”)

Mrs Fiona Dunn, 59 Hadfast Road, Cousland, Dalkeith, EH22 2NZ (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent pay the Applicant the sum of £525.

Background

This is an application under Regulation 9 of the Regulations and Rule 103 of the Tribunal Procedure Rules in respect of the failure to protect a tenancy deposit.

The Tribunal had regard to the following documents:

1. Application received 12 November 2019;
2. AT5 dated 27 March 2017;
3. Tenancy Agreement dated 27 March 2017;
4. Emails between the Parties dated 4 and 5 November 2019;
5. Written Submissions from Respondent dated 18 February 2020;
6. Email from the Applicant dated 2 March 2020.

A. Strain

Case Management Discussion (CMD)

The Applicant appeared in person as did the Respondent. Both represented themselves.

The Parties agreed that a deposit of £1,050 had been paid on the date of entry to the Property. It had not been protected. The tenancy ended on 13 October 2019 and the Respondent returned £550 of the deposit around 31 October 2019. The balance was retained by her to cover replacement of a damaged work top and removal of oil from the drive to the Property. The retention and damage to the Property was disputed. The Respondent returned a further £200 to the Applicant on 5 December 2019.

The Respondent confirmed that she let another Property in respect of which the deposit is protected. She thinks that she was aware of the requirement to protect deposits but was distracted by personal circumstances at the time. She subsequently forgot to protect the deposit until the Applicant raised the issue at the end of the tenancy.

The Tribunal found the following facts agreed or established:

1. The Parties entered in to a tenancy commencing 14 April 2017;
2. The Applicant paid a deposit of £1,050 at entry to the Property;
3. The Respondent returned the sums of £550 and £200 to the Applicant on or around 31 October and 5 December 2019;
4. The Respondent retained the sum of £300 towards repairs;
5. The Deposit was not protected for the duration of the tenancy;
6. The Respondent was distracted by personal circumstances at the commencement of the tenancy and subsequently forgot to protect the deposit;
7. The Respondent has another Property she lets in respect of which the deposit is protected.

The Tribunal considered the terms of the Regulations and was satisfied that it had sufficient information to determine the matter at this stage and that the procedure was fair.

It then fell to the Tribunal to consider what award should be made in respect of the failure to protect the deposit. The Tribunal had regard to the case of ***Russell-Smith and Others v Uchegbu [2016] SC EDIN 64***. In particular the Tribunal considered what was a fair, proportionate and just sanction in the circumstances of the case, always having regard to the purpose of the Regulations and the gravity of the breach. Each case will depend upon its own facts and in the end of the day the exercise by the Tribunal of its judicial discretion is a balancing exercise.

The Tribunal weighed all of the factors and found it to be of significance that the deposit had been unprotected for the entirety of the tenancy; £300 of the deposit had been unilaterally retained by the Respondent; the Respondent was distracted by personal circumstances at the commencement of the tenancy and forgot to protect the deposit; the Respondent has another Property which she lets and has protected the deposit.

A. Strain

The Tribunal found the breach to be at the lower end of the scale and accordingly determined that the sanction should be £525 in the particular facts and circumstances of the case.

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.

Alan Strain

5 March 2020

Legal Member/Chair

Date