



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

Chamber Ref: FTS/HPC/PR/20/1563

Re: Property at Flat 1, Crichtie House, Stuartfield, Peterhead, Aberdeenshire, AB42 5DY (“the Property”)

Parties:

Ms Laura Dorantt, 14 Percival Road, Inverness, IV3 5QE (“the Applicant”)

Mr Geordie Burnett-Stuart, Crichtie House, Stuartfield, Peterhead, Aberdeenshire, AV42 5DY (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to the Order for payment.

Background

The Applicant submitted an application seeking an order for payment in terms of Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011. The Tribunal intimated the application to the Respondent on 2 September 2020 and provided details of today’s case management discussion. In that letter, the Respondent was advised that any written representations he wished to make should be sent to the Tribunal by 23 September 2020. The Respondent was also told that he required to take part in the case management discussion and was informed that the Tribunal could make a decision today on the application if the Tribunal has sufficient information and considers the procedure to have been fair. The Tribunal received a written response from the Respondent on 11 September 2020.

The Case management discussion

The case management discussion took place by conference call and both parties took part. Parties were invited to discuss matters directly, if wished. The Applicant did not wish to have a discussion and invited the Tribunal to determine the application. The Respondent accepted that he had failed to pay the Applicant's deposit of £525 into an approved scheme and had failed to provide the prescribed information as required by regulations. The Applicant had produced email correspondence which had passed between the parties. In the course of that correspondence, the Applicant agreed that from her deposit of £525, there should be deducted the sum of £175 which represented one week's rent and the final electricity bill. The Applicant sought payment in the sum of £350.

Findings in Fact:

1. The Applicant and the Respondent entered into a tenancy agreement in respect of the property. The period of the tenancy was from 20 November 2018 to 20 May 2019. The tenancy continued thereafter by tacit relocation.
2. The Applicant paid a deposit of £525 to the Respondent on the date of entry.
3. The Applicant vacated the property on 26 April 2020.
4. The Respondent failed to return the Applicant's deposit to her.
5. The Respondent failed to pay the Applicant's deposit to an administrator of an approved scheme.
6. The Respondent failed to provide the Applicant with the Prescribed information about her tenancy deposit in accordance with Regulation 42 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Reason for Decision

The Tribunal proceeded on the basis of the written documents which were before it and the information provided by both parties at the case management discussion. The Applicant's deposit was not protected and there was no Deposit Protection Certificate issued to the Applicant. The fact that the deposit was not lodged has resulted in the Applicant being unable to avail herself of an opportunity to use the alternative dispute resolution offered by one of the approved schemes.

The terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 are mandatory and state "*A landlord who has received a tenancy deposit in*

connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy-

- (a) pay the deposit to the scheme administrator of an approved scheme; and*
- (b) provide the tenant with the information required under regulation 42.”*

The Tribunal was satisfied that the Respondent failed to comply with his duties in terms of that regulation. It was the Respondent’s duty to pay the deposit to the scheme administrator and he failed to do that.

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Nicola Irvine

01 October 2020

Legal Member/Chair

Date