



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/23/2842

Re: Property at 11 King Street, Aberdeen, AB24 5AA (“the Property”)

Parties:

Mr Roderick Numeron, Flat D, 1 South Esplanade West, Aberdeen, AB11 9AA (“the Applicant”)

Mr John R Gowans, Mr Dean Gowans, 33 Carfrae Road, Edinburgh, EH4 3QG (“the Respondent”)

Tribunal Members:

Lesley-Anne Mulholland (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an Order for Payment from the Respondents in favour of the Applicant in the sum of £400.00.

1. The Applicant is the former tenant of the property. The Respondents are the owners. In 2021, the parties entered into a Private Residential Tenancy Agreement. The Applicant paid a deposit of £100 to the Respondents in May 2021. The Applicant claims that the Respondents failed to deposit this into a Safe Deposit Scheme. He seeks return of the deposit and compensation for the failure to keep it safe.
4. A Case Management Discussion took place remotely on the 13 November 2023. The Applicant attended by telephone. The Respondents failed to attend without excuse. I waited until 210pm and decided to proceed in their absence having regard to the overriding objective and because it was just and fair in all of the circumstances. The Applicant has communicated with the Respondents by message and email and has not received a response. I was satisfied that

the application has been properly served on the Respondents and that they have been notified of today's hearing. The Respondents have failed to engage with the application in anyway.

5. There were no apparent difficulties with sound or connectivity issues. I was satisfied that the Applicant had a reasonable opportunity to put his points across and that the hearing was fair. No complaint about the lack of effective participation caused by the remote hearing was brought to my attention.
6. The Applicant informed me that he checked with the three safe-deposit schemes in Scotland who confirmed that his deposit had not been lodged there. He had the assistance of Home Shelter in Aberdeen. He referred me to the screenshots of the text messages and emails that had been sent to the Respondents calling on them to return his deposit and provide him with details of the safe deposit scheme used by the. They failed to respond.
7. The deposit should have been paid into a safe deposit scheme within 30 days. The Respondents as Landlords should have been aware of their obligations and duties and the requirement to place the deposit into a safe deposit scheme. The Respondents would have had the deposit available to them during this period. The applicant left it to my discretion in relation to the amount of compensation to be awarded.

FINDINGS IN FACT

8. The Applicant and the Respondents entered into a Tenancy Agreement in 2021.
9. The Applicant paid a deposit of £100 to the Respondent in May 2021.
10. The Respondents failed to lodge the deposit with a safe deposit scheme from May 2021, a period of around 3 ½ years.
11. The Respondents did not pay the deposit into an approved scheme within 30 days as required by law.
12. The Respondents have failed to return the deposit to the Applicant.

REASONS FOR DECISION

13. I proceeded on the basis of the documents and representations from the Applicant, together with oral submissions.

14. Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 provides:

(1) 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.

15. Regulation 10 of the Tenancy Deposit Regulations provides:

If satisfied that the landlord did not comply with any duty in regulation 3, the First-tier Tribunal:

(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and

(b) may, as the First-tier Tribunal considers appropriate in the circumstances of the application, order the landlord to

(i) pay the tenancy deposit to an approved scheme; or

(ii) provide the tenant with the information required under regulation 42.

16. As I am satisfied that the Respondent failed to pay the deposit into an approved scheme, the only matter left to determine is the level of compensation to be paid to the Applicant.

17. Regulation 10 of the 2011 Regulations provides that where there has been a breach of Regulation 3 and Regulation 9 has been satisfied, the Tribunal must impose a sanction of up to three times the deposit paid by the Tenant.

18. Any award under Regulation 10 is required to reflect a sanction which is fair, proportionate and just given the circumstances (Jensen v Fappiano 2015 GWD 4-89). In Tenzin v Russell 2015 House. L.R. 11 it was held that any payment in terms of Regulation 10 is the subject of judicial discretion after careful consideration of all the circumstances.

19. I have taken into account that the Applicant's deposit remained unprotected for a period of 3 ½ years. This is a serious breach. Taking everything into account, I have decided the appropriate sanction to be the equivalent of 3 times the deposit. Accordingly, the Respondent is sanctioned to make payment of

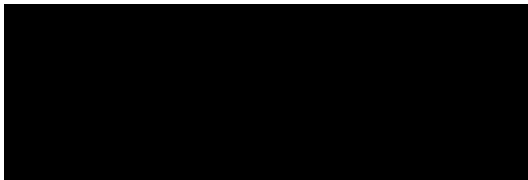
compensation to the Applicant in the sum of £400, representing the deposit of £100 plus 3 times the deposit of £100 giving a total sum of £400.00.

DECISION

An Order for Payment is granted in the amount 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.



Legal Chair

13 November 2023

Date