



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section the Housing (Scotland) Act 2006 section 121 and Regulation 9 the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/23/1744

Re: Property at 15 1/L Stafford Street, Aberdeen, AB25 3UP (“the Property”)

Parties:

Mr Adam Osterberg, 17 Roland Crescent, Newton Mearns, Glasgow, G77 5JT (“the Applicant”)

Mr Clarke Shepherd, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Landlord is in breach of his obligations in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“Regulation 3”). The Respondent shall make payment to the Applicant in the sum of £1212.50 (ONE THOUSAND TWO HUNDRED AND TWELVE POUNDS AND FIFTY PENCE) STIRLING

Background

1. The Tribunal received an application from the Applicant in terms of Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Rules 2017 which was dated 28th May 2023. The Application included a lease which detailed that a deposit of £485 had been paid.
2. On 2nd February 2022, all parties were written to with the date for the Case Management Discussion (“CMD”) of 15th March 2022 at 10am by teleconferencing. The letter also requested all written representations be submitted by 23rd February 2022.

3. On 24th July 2023 all parties were written to with the date for the Case Management Discussion (“CMD”) of 23rd August 2023 at 2pm by teleconferencing. The letter also requested all written representations be submitted by 14th August 2023.
4. On 27th July 2023, sheriff officers tried to serve the letter with notice of the CMD date and documentation upon the Respondent. The Respondents were not able to effect service. The CMD was postponed.
5. On 22nd September 2023, the Applicant emailed the Housing and Property Chamber to advise that the Respondent has returned £440 out of his £485 deposit.
6. On 26th September 2023 all parties were written to with the date for the CMD of 1st November 2023 at 10am by teleconferencing. Service by Advertisement was undertaken upon the Respondent from 6th October 2021.
7. On or around 2nd October 2023, the Respondent telephoned the Housing and Property Chamber. He left a message. His phone call was returned on two occasions and voicemails were left for him to contact at certain times.
8. This case was conjoined with FTS/HPC/CV/23/1743.

Case Management Discussion

9. A CMD was held 1st November 2023 at 10am by teleconferencing. The Applicant was present and represented himself. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondents did not make representations in advance of the CMD.
10. It was noted the lease that was signed was not a Private Rented Tenancy (“PRT”). However, the lease defaults to a PRT regardless of what the parties have signed.
11. The Applicant said that he has now had £440 of his deposit returned to him at the end of September 2023. He believes that it was a reaction by the Respondent from finding out about these proceedings. The Applicant received a WhatsApp message from the Respondent saying that the deduction of £45 was for professional cleaning costs. The Respondent said that he would reimburse the amount if the Applicant had already paid for professional cleaning costs. The Applicant said that he had left the Property in immaculate condition. The Respondent clearly did not know if that was the case or not when he instructed the professional cleaners. This is clearly a standard end of tenancy action which should not be passed onto the Applicant. There is no clause in the signed lease document that agrees to this being undertaken. Furthermore, any such clause would be unreasonable for a tenant to bear the burden of the standard end of tenancy costs without explanation.

Findings and reason for decision

12. A Private Rented Tenancy Agreement commenced 5th September 2022. It was not a standard PRT but defaulted to it under section 3 of Private Housing (Tenancies)(Scotland) Act 2016.
13. The Applicant paid a deposit of £485 to the Respondent by bank transfer on 30th August 2023.
14. On or around 22nd September 2023 the Respondent paid the Applicant £440 of the deposit. The remaining £45 was allocated to professional cleaning costs. There was nothing in the lease or any other document to indicate that this was an end of tenancy term. No evidence of why professional cleaning was needed at the end of tenancy.
15. The deposit was not lodged in any approved deposit scheme. This is a breach of the regulations. The lease also stated that it was to be lodged in a bank account which is not a legal term in terms of the Regulations.
16. The Respondent has failed to comply with the regulations to ensure that the deposit was lodged in an appropriate scheme within 30 days from the start of the tenancy. The Respondent has not engaged with the Tribunal process to advise why this has happened and what steps have been taken to ensure that it will not happen again.

Decision

17. The Respondent has a duty under Regulation 3 to place the deposit in an approved scheme within the specified time but failed to do so. The Respondent did not engage with the Tribunal process to explain why the deposit was late and what steps had been taken to prevent such a situation happening again. The Tribunal decided that a fair, just and proportionate sanction would be to order the Respondent to pay the Applicant two and a half times the amount of the deposit which is £1212.50 (ONE THOUSAND TWO HUNDRED AND TWELVE POUNDS AND FIFTY PENCE)

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.



1st November 2023

Legal Member/Chair

Date