



Decision with Statement of Reasons 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/23/3564

Re: Property at 49 Westermains Avenue, Kirkintilloch, G66 1EL (“the Property”)

Parties:

Miss Caroline Murphy, 30 Briar Road, Kirkintilloch, G66 3SA (“the Applicant”)

Mrs Martha Gentle, 1/1 Canal Lane, Kirkintilloch, G66 1QL (“the Respondent”)

Tribunal Members:

Mark Thorley (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order that the Respondent should pay to the Applicant the sum of £2,000 should be granted.

- Background
 1. The Applicant applied to the Tribunal by application sent on 8 October 2023. Accompanying the application was a variety of documents:
 - a) Bank statements – detailing the deposit and rent payments;
 - b) Texts between the landlord and Applicant;
 - c) Message from cleaning company;
 - d) Message between the Applicant, her partner and his employer.
 2. The application was acknowledged by the Tribunal on 10 October 2023. This application was received alongside case number FTS/HPC/CV/23/3563.

3. On 12 October 2023, the Tribunal wrote to the Applicant requiring certain further information.
 4. The information was provided by the Applicant on 18 October 2023.
 5. On 23 October 2023, the Tribunal accepted the information and confirmed that the Application would be considered.
 6. Further information was then sought of the Applicant and on 7 November 2023 the application was accepted for determination.
 7. The application was sent out to the Respondent on 30 November 2023.
 8. A case management hearing took place on 29 January 2024, calling alongside the other application, and a hearing was then assigned for 7 May 2024.
- The Hearing
 1. At the hearing, the Applicant attended along with her partner, Mr Roy. Mr Gentle appeared on behalf of the Respondent.
 2. Both parties had provided supplementary information following up on the case management discussion.
 3. The Applicant set out the position in relation to the deposit. She indicated that the deposit had not been returned to her. The deposit of £1,000 had been paid by the Applicant on or about 16 September 2022. The tenancy agreement had been signed on 14 September 2022.
 4. The Applicant moved into the Property with her partner and two children.
 5. At the conclusion of the tenancy, the Applicant had been assured by Mr Gentle that the deposit was secure.
 6. The deposit had never been paid into any Deposit Scheme.
 7. The tenancy deposit had never been repaid to her. She had needed to borrow money from her partner's employment to pay a deposit to secure another tenancy.
 - Findings in Fact
 1. The parties entered into a contract of lease in respect of the property at 49 Westermains Avenue, Kirkintilloch in a contract agreement signed and dated 14 September 2022
 2. The commencement date on the tenancy was 1 October 2022.

3. The Applicant, in accordance with the lease agreement, and in accordance with a handwritten note provided to her by Mr Gentle on 16 September 2022, paid a deposit of £1,000.
 4. The tenancy ended on or around 30 September 2023.
 5. The deposit had never been paid into a Deposit Scheme.
- Reasons for Decision
 1. The tribunal accepted entirely the evidence of the Applicant to the extent that the £1,000 had been paid by her as a deposit. The contract agreement between the parties set that out. It had been paid over by her as a deposit. It had been paid over in advance of her taking occupation of the Property. It was not an advance of rental income.
 2. It was accepted that the money had never been paid into a Deposit Scheme. It had not been returned.
 3. The Respondent's position was that the money was there in case damage was done to the Property or, alternatively, that the Applicant left "early". The Tribunal did not accept this as a reason for not placing a deposit within a Deposit Scheme.
 4. This is a property that was apparently owned by the Respondent and her son. They had owned it for 10 years. It had been rented out at various points in time. The Tribunal were concerned that the deposit still had not been returned to the Applicant.
 5. The Tribunal were of the view that this was a case in which they could have awarded up to three times the amount of the deposit. That was restricted to two times the amount of the deposit on the basis that the Respondent had no previous history in relation to failure to return deposits. The Tribunal, however, did regard this as a serious matter. The mitigation was based on previous good character of the Respondent.

- Decision

The decision is that the Respondent pays the Applicant the sum of £2,000.

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.



__M.Thorley_____
____ Legal Member/Chair

7 May 2024

Date