



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 (“the 2011 Regulations”)

Chamber Ref: FTS/HPC/PR/24/0995

Re: Property at 20 Bonnyview Drive, Aberdeen, AB16 7FW (“the Property”)

Parties:

Mr Viktor Damyanov, 42A Seabank Road, Nairn, IV12 4EY (“the Applicant”)

Agnieszka Kozwolska, 29 Sunningdale Mews, Welwyn Garden City, AL7 1UP (“the Respondent”)

Tribunal Members:

Alastair Houston (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of £1800.00 be made in favour of the Applicant.

1. Background

1.1 This is an application under rule 103 of the Chamber Rules. The Applicant seeks an order for payment equivalent to three times the deposit paid under a tenancy agreement in respect of the property, amounting to £1800.00.

1.2 The application was accompanied by copies of the written tenancy agreement between the parties and text messages exchanged by them. The application was conjoined with the application reference FTS/HPC/CV/24/0989. No writtent representations had been received from the Respondent.

2. The Case Management Discussion

- 2.1 The Case Management Discussion took place on 1 July 2024 by teleconference. The Applicant attended personally. The Respondent was neither present nor represented.
- 2.2 The Applicant confirmed that the applications were insisted upon. The Tribunal noted that intimation of the applications and the Case Management Discussion had been given to the Respondent, at her address in England, via process server. Accordingly, the Tribunal deemed it appropriate to proceed in her absence as permitted by Rule 29 of the Chamber Rules.
- 2.3 The Applicant advised that the tenancy of the property had commenced on 14 October 2022. It had continued until 27 January 2024. A deposit of £600.00 had been paid in connection with the tenancy. The Respondent had advised the Applicant that the property would require to be inspected however, he had not heard anything further and the deposit had not been returned. The Applicant did not know where the deposit was held. He had never been provided with any information following its payment to indicate that it was held within an approved scheme.

3. Reasons For Decision

- 3.1 The Applicant paid a deposit of £600.00 under the tenancy agreement between the parties. In terms of Regulation 3 of the 2011 Regulations, the Respondent was obliged to pay the deposit to an approved scheme and provide the Applicant with the information prescribed by Regulation 42 of the 2011 Regulations. This ought to have been done within 30 working days of the tenancy commencing.
- 3.2 If satisfied that the Respondent has failed to comply with these duties, Regulation 10 of the 2011 Regulations provides for the Tribunal making an order for payment of an amount not exceeding three times the deposit paid. The Tribunal was so satisfied.
- 3.3 In selecting an amount, the 2011 Regulations do not prescribe any matters to which the Tribunal is to have particular regard. Accordingly, the Tribunal considered the whole circumstances. In the present application, the Applicant had made payment of a deposit which appeared to have gone unprotected for the entire duration of the tenancy. The Applicant had not been given any information as to where the deposit was held. The deposit had been retained following the end of the tenancy and the Applicant had been deprived of access to the dispute resolution process afforded a deposit scheme. This amounted to a serious breach of the 2011 Regulations and, in the absence of any mitigating circumstances offered by the Respondent, ought to result in an order of the maximum amount the Tribunal can make.

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.

A. Houston

Legal Member/Chair

Date: 1st July 2024