



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

Chamber Ref: FTS/HPC/PR/24/3109

Re: Property at 4 North Street, Duns, Berwickshire, TD11 3AP (“the Property”)

Parties:

Ms Janine King, 54 Station Drive, Duns, Berwickshire, TD11 3GZ (“the Applicant”)

Miss Toni-Michelle Lee, 68 Hendersyd Park, Kelso, TD5 7TU (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member)

Decision (in absence of the Applicant)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Landlord is in breach of her 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 £550 (FIVE HUNDRED AND FIFTY POUNDS) 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 on 26th June 2024.
2. On 29th January 2025, all parties were written to with the date for the Case Management Discussion (“CMD”) of 7th March 2025 at 2pm by teleconferencing. The letter also requested all written representations be submitted by 19th February 2025.

3. On 3rd February 2025, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent by leaving it in the hands of the Respondent's daughter. This was evidenced by Certificate of Intimation dated 3rd February 2025.

The Case Management Discussion

4. A CMD was held on 7th March 2025 at 2pm by teleconferencing. The Applicant was not present and was not represented. The Respondent was present and represented herself. The Tribunal proceeded in terms of Rule 29 of the Rules.
5. The Tribunal was able to continue to consider the application as it revolved around a breach. The Tribunal was then to consider what level of penalty would be issued. The Respondent had lodged a submission which raised other tenancy issues. The Tribunal explained that it did not have the remit to address those or offset any costs arising from end of tenancy issues.
6. The Respondent explained that this was her only rental property. It has been on the market to sell since July 2024. She intends to remove herself from the Landlord Register. She only ever let the Property out to the Applicant. She had lived in the Property herself but had to relocate for her job and so decided to rent out. She now does not want to be a landlord again.
7. The Respondent admitted that she did not know that it was her legal duty to lodge a deposit in an approved scheme within 30 days of receiving it. She still has it in her bank account. The Tribunal did not consider that with the tenancy ending over 6 months ago that it had the power to direct the Respondent to lodge it in an approved scheme. It noted that she may wish to take advice on this point. The deposit schemes may be able to advise on this or a solicitor or the Scottish Association of Landlords or other such organisation.
8. The Respondent said that it was clear from her submission that the deposit was £550 not a full months deposit. There is a text message with a receipt for payment for £550 which the Applicant said was for the deposit. This was dated 16th March 2023 which was evidence by the deposit into the Respondent's bank account dated that date. This was on page 14 of the Respondent's submissions.
9. The Respondent said that she had a personal problems at the time that she had let out the Property. She said that she was greatly distracted by these issues which were affecting her and her children. She admitted that she should have taken advice. She reiterated that she did not wish to be a landlord ever again.
10. The Tribunal considered it appropriate to issue a penalty for this breach as per the Regulations. The Tribunal noted that the Respondent admitted the breach, has retained the deposit in her bank account having not spent it and is now selling her only rental property. The Tribunal took this into consideration and awarded a one times penalty of £550.

Findings and reason for decision

11. A Private Rented Tenancy Agreement commenced 3rd April 2023. The tenancy ended on or around 29th June 2024
12. A deposit of £550 was paid on 16th March 2023.
13. The deposit has not been lodged in an approved deposit scheme within 30 days from the start of the tenancy. This is a breach of the regulations. The Respondent admitted the breach.
14. The Property was put on the market for sale in July 2024. As of yet it has not been sold.
15. It is the intention of the Respondent to remove herself from the Landlord Register as this is her only rental property and she no longer wants to be a landlord.
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 engaged with the Tribunal process to advise why this has happened and she is now selling the Property with the view to not being a landlord 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 engage with the Tribunal process to explain why the deposit was not lodged in an approved scheme and that she is now selling the Property and in the process of removing herself from the Landlord Register. The Tribunal decided that a fair, just and proportionate sanction would be to order the Respondent to pay the Applicant one times the amount of the deposit (£550.00).

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.

G.Miller

7th March 2025

Legal Member/Chair

Date