



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

Chamber Ref: FTS/HPC/PR/24/3798

Re: Property at Apartment 4, Castle Gardens, Barrockstreet, Thurso, KW14 7GZ (“the Property”)

Parties:

Miss Davina Sinclair, Apartment 4, Castle Gardens, Barrockstreet, Thurso, KW14 7GZ (“the Applicant”)

Mr Liam Polson, 37 John Kennedy Drive, Thurso, KW14 7DZ (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member)

Decision

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 £725 (SEVEN HUNDRED AND TWENTY FIVE 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 16th August 2024. The Application included a lease which detailed that a deposit of £725 had been paid.
2. On 29th January 2025, all parties were written to with the date for the Case Management Discussion (“CMD”) of 7th March 2025 at 10am by teleconferencing. The letter also requested all written representations be submitted by 19th February 2025.

3. On 31st January 2025, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent by leaving it in the hands of his mother Ms Jacqueline Polson. This was evidenced by Certificate of Intimation dated 31st January 2025.

The Case Management Discussion

4. A CMD was held on 7th March 2025 at 10am by teleconferencing. The Applicant was represented by Ms Alison MacRury, Citizens Advice Bureau. The Respondent was present and represented by Ms Florence Fisher, solicitor, D and H Law were not present. Ms Kim Thain, observer from D and H Law was present as an observer only.
5. Ms MacRury said that the Applicant first sought advice from CAB in July 2024. The tenancy started on 1st November 2023. A deposit of £725 was given to the Respondent at that time. An application to the Housing and Property Chamber was made on 16th August 2024. It was only after this application was lodged that the deposit was paid into Safe Deposit Scotland on 30th August 2024. The Respondent left the tenancy on 12th February 2025. Ms MacRury noted that there were several issues regarding the tenancy. The Tribunal said that in respect of this case it was only concerned with whether a deposit was lodged within an approved scheme within 30 days of receiving it as that was where the breach in the Regulations. Mrs MacRury said that the Appellant felt misled by the fact that the papers she received had said that the deposit was lodged with Safe Deposit Scotland.
6. Ms Fisher said that it was admitted that the Respondent did receive a deposit for £725 from the Applicant. It is admitted that it was not lodged in an approved deposit scheme with 30 days of receiving it. Ms Fisher said that the Respondent only owned this one property as a rental property. The Property is now on the market to be sold. This Property was the one that he lived in with his family. It did not have a garden so did not suit his family. He then rented an alternative property but let out this property. He did not understand or appreciate his legal duties as a landlord. He had taken a style lease with its attachments from someone at his work and used this as the template for what he provided to the Applicant. The Respondent intends to remove himself as a landlord from the Landlord Register after this hearing. The Respondent said that he had been at fault by not lodging the deposit in an approved scheme on time. He said that it was his own fault and that he lodged it in an approved scheme as soon as he knew that it was his legal duty to do so.
7. The Tribunal was content that there was a breach of the Regulations. The Tribunal considered that a one times penalty was appropriate given that the Respondent had admitted the breach, that he had lodged the deposit once he became aware of the breach and that he was no longer to be a landlord. It is also noted that the Applicant's deposit was returned to her.

Findings and reason for decision

8. A Private Rented Tenancy Agreement commenced 1st November 2023. The tenancy ended on 12th February 2025.

9. An application dated 16th August 2024 was received by the Housing and Property Chamber.
10. A deposit of £725 was paid to the Respondent as a deposit on 1st November 2023.
11. The deposit was lodged with Safe Deposit Scotland on 30th August 2024 which is outwith 30 days from the start of the tenancy. This is a breach of the regulations.
12. The Respondent admitted the breach.
13. The Respondent only has one rental property. It is no longer available to rent as it is on the market to be sold. The Respondent is to remove himself from the Landlord Register.
14. 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 what steps have been taken to ensure that it will not happen again.

Decision

15. 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 late. He has admitted the breach. He is now in the process of selling the Property and removing himself 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 (£725.00).

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.

Gabrielle Miller

7th March 2025

Legal Member/Chair

Date