

Housing and Property Chamber
First-tier Tribunal for Scotland



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/19/0403

Re: Property at 38 Limefield, Edinburgh, EH17 8PF ("the Property")

Parties:

Ms Katarzyna Szelemej, 17/2 The Gallolee, Edinburgh, EH13 9QL ("the Applicant")

Mr Craig Carr, 38 Limefield, Edinburgh, EH17 8PF ("the Respondent")

Tribunal Members:

Yvonne McKenna (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent did not comply with the duties in Regulation 3 of the 2011 Regulations and ordered the Respondent to pay to the Applicant the amount of £2250.00.

BACKGROUND

This is an application dated 6th February 2019 brought in terms of Rule 103 (Application for order for payment where landlord has not paid the deposit into an approved scheme) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended. The application is made under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations").

The Applicant provided with her application an inventory of documents comprising a variety of text message conversations between the Applicant and the Respondent. After the application was served on the Respondent he had submitted by e-mail his written response to the application dated 24th March 2019 in which he accepted that the deposit had not been registered into a deposit scheme. He stated that there were damages to the property and contents, and this was the reason that the deposit was being withheld.

THE CASE MANAGEMENT DISCUSSION (CMD)

A Case Management Discussion was held on 4th May 2019 at 10am in George House Edinburgh. The Applicant appeared along with her Representative from CHAI (Community Help and Advice Initiative) Mr. Shaun McPhee. The Respondent did not attend and was not represented. There had been no contact with the Tribunal today to indicate why he was not present. He had lodged written representations earlier in the proceedings as detailed above and had also requested a postponement of an earlier CMD on 5th April 2019 to attend a funeral. The tribunal was satisfied that he had received notification of today's hearing by letter dated 13th April 2019 and decided to proceed in his absence. The tribunal was satisfied that there was sufficient information before it to determine the application and there was no need for a further hearing.

Mr. McPhee stated that this was a very straightforward case and sought an order for the maximum amount namely three times the deposit. He stated that the question for the tribunal was whether the Respondent had protected the deposit in an approved scheme and that the Respondent had admitted in his own representations that he did not. He submitted that the points that had been raised by the Respondent in his representations were irrelevant to the application and that as a landlord the Respondent had disregarded the law, the authorities and the tribunal process. He maintained that there were no issues outstanding and sought a decision today.

The application made clear that the lease commenced in October 2016 and the Applicant quit the property on 28th December 2018. In terms of the lease agreement, the Applicant paid a deposit of £750 to the Respondent. The deposit was paid when an initial lease was signed by the Applicant in December 2015. The lease of October 2016 is a successor lease of the same property with no breaks in the tenancy. Although no lease was provided it was not disputed by the Respondent in his representations that the term, or the amount of the deposit, or the date of termination of the lease were incorrect. This application was accordingly brought timeously within the 3-month period provided in terms of regulation 9(2) of the 2011 Regulations.

The Respondent accepted in his representations that he has not paid the deposit into an approved scheme, and further accepted that he was obliged to do so by the 2011 Regulations. He advised that he was unaware of the 2011 Regulations and of his obligation to pay the deposit into an approved scheme. He also admitted that he had not registered with the landlords register initially as required by the Antisocial Behaviour etc (Scotland) Act 2004 and that he applied only after enforcement action was taken. He stated that he lacked knowledge as this was his first time in renting property out.

The Applicant confirmed that she had still not received her deposit back. She said that the Respondent had initially told her that his mother held the deposit and had then stopped taking her calls. Mr. McPhee stated that when his organisation became involved that the Respondent had indicated the same position to him. He said that the Respondent told him that he would be completing an Inventory of property he claimed was damaged in March 2019 and then refused to take any telephone calls.

The Applicant confirmed that the Lease was in her name solely and that she had lived in the property with her boyfriend Adam Kocubowski throughout the duration of the lease. He was not named as a

joint applicant as he was not a tenant on the lease . She said that she intended to share any award made with him and they remain a couple.

FINDS IN FACT

1 The Applicant and the Respondent entered into a tenancy agreement in December 2015. A further lease was signed by the parties in October 2016. There was no break in the tenancy.

2 A deposit of £750 was paid by the Applicant to the Respondent in December 2015.

3 The Respondent required to lodge the deposit into an approved scheme within a 30 day period of receipt.

4 The Respondent failed to lodge the tenancy deposit in an approved scheme

5 On 28th December 2018 the Applicant vacated the property.

REASONS FOR DECISION

This application was brought timeously in terms of Regulation 9(2) of the 2011 Regulations.

Regulation 3 of the 2011 Regulations (which came into force on 7th March 2011) provides as follows;-

“(1) A landlord who has received a tenancy deposit in connection relevant tenancy must, within 30 working days of the beginning tenancy-

(a) pay the deposit to the scheme administrator of an approved scheme; and

(b) provide the tenant with the information required under regulation 42.”

The Respondent as landlord was required to pay the deposit into an approved scheme. He accepts that he failed to do so.

Regulation 10 of the 2011 Regulations provides as follows:

“If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal –

(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and

The Tribunal is satisfied that the Respondent did not comply with his duty under regulation 3, and accordingly it must order the Respondent to pay the Applicant an amount not exceeding three times the amount of the tenancy deposit.

In the case of *Jenson v Fappiano* 2015 G.W.D 4-89, Sheriff Welsh opined in relation to regulation 10 of the 2011 Regulations that there had to be a judicial assay of the nature of the non-compliance in the circumstances of the case and a value attached thereto which sounded in sanction, and that there should be a fair, proportionate and just sanction in the circumstances of the case. With that assessment the Tribunal respectfully agrees.

In the case of *Tenzin v Russell* 2015 Hous. L. R. 11, an Extra Division of the Inner House of the Court of Session confirmed that the amount of any award in respect of regulation 10(a) of the 2011 Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case.

In determining what a fair, proportionate and just sanction in the circumstances of this application should be, the tribunal took account of the facts that the Respondent does not run any form of substantial commercial letting business and stated that this was his first letting of a property. He was unaware of the need for the deposit to be placed with an approved scheme, and accepted that he was at fault and had contravened Regulation 3 of the 2011 Regulations. He accepted that had not registered as a landlord as required. He also accepted that he had still not returned the deposit to the Applicant (albeit he said that there was damage to the Property)

In the circumstances of this case the tribunal considers that ignorance of the terms of the 2011 Regulations is no excuse or defence, and the foregoing factors do not represent mitigation in respect of the sum to be awarded in the exercise of its judicial discretion.

The Respondent entered into the lease entirely unaware of his legal obligations as a landlord with respect to the 2011 Regulations, which regulations have been enacted to provide protection to tenants in respect of their deposit and ensure that they can obtain repayment of their deposit at the conclusion of the lease, and the fact that the period during which the deposit was not lodged in an approved scheme and during which the Applicant did not have the security provided by such lodging was lengthy (three years).

He did not register as a landlord.

He has still not returned the deposit.

He has refused to engage with the Applicant or her Representative.

He has not attended the CMD today.

The tribunal considers that the maximum penalty of three times the deposit is an appropriate sanction to impose.

DECISION

For the foregoing reasons, the Tribunal orders the Respondent in respect of his breach of Regulation 3 of the 2011 Regulations: to make payment to the Applicant of the sum of £2250.00 in terms of Regulation 10(a) of the 2011 Regulations

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.

Yvonne McKenna

 Legal Member/Chair

14/05/19
Date