

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 section 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 Szelemiej, 17/2 The Gallolee, Edinburgh, EH13 9QL (“the Applicant”)

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

Tribunal Members:

Maurice O'Carroll (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent did not comply with the duties contained within Regulation 3 of the 2011 Regulations and ordered the Respondent to pay the Applicant the amount of £2250

Background

1. The application had previously been the subject of a case management discussion (“CMD”) held on 14 May 2019 where the Respondent had not been present. At that CMD, the Tribunal imposed a penalty in terms of the Regulation in an amount equal to three times the deposit due under the tenancy agreement, being £2,250.
2. Following intimation of the Tribunal’s decision of 14 May 2019, the Respondent sought a recall of the decision in terms of rule 30 of the 2017 Rules (as amended). This was granted by decision of the same Tribunal dated 20 June 2019.
3. Accordingly, a fresh CMD was held at 10am on 6 September 2019 at George House, George Street, Edinburgh before a new Legal Member of the Tribunal.
4. Mr Carr, the Respondent, appeared on his own behalf and made submissions. The Applicant appeared on her own behalf. She had understood that she was to

have the assistance of CHAS (the Community Help and Assistance Scotland Initiative). However, her previous representative had left that organisation and no cover for the fresh CMD was provided.

5. The Chairman decided to proceed with the hearing, but was prepared to adjourn to another date if it became clear that the Applicant was disadvantaged by the absence of her representative. In the event, that was unnecessary.

Findings in fact

6. The relevant findings in fact are set out at pages 1 to 3 of the Tribunal's decision of 14 May 2019 and are adopted here. The present Tribunal also gratefully adopts the discussion on the law as set out by the earlier Tribunal at pages 3 and 4 of its decision.

Discussion at the CMD

7. The Respondent was provided with an opportunity to present the evidence that he would have done had he been present at the original CMD held on 14 May 2019. He explained that he was unaware of the requirement to place the Applicant's deposit in an approved scheme in accordance with the 2011 Regulations. Had he been so aware, he would have done so. He also mentioned that he is a single parent with a 6 year old daughter to support and would not be able to pay the amount that was previously ordered by the Tribunal on 14 May 2019. He provided no vouching of income or any evidence demonstrating financial difficulty.
8. The Respondent provided photographic evidence of the state of the Property which he stated had been damaged by the Applicant during the tenancy. He estimated the extent of damage as being worth £395. He had not, however, returned the sum of £355 to the Applicant and still, as at the date of the hearing, retained the full deposit of £750 originally paid by her to him.
9. In essence, the Respondent provided nothing further to his representation of 24 March 2019, being that he was new to the rental market and naïve as to the legal requirements that are placed on landlords by the relevant legislation.
10. The Applicant indicated that she wished to insist on the amount sought in the original application, being a penalty of three times the amount of the deposit. She also indicated the difficulty she had had in the past in attempting to have her deposit returned, both in relation to communications with the Respondent and also his mother, who apparently held the deposit.

Reasons for decision

11. The question of damage to the Property is irrelevant to the issue of non-payment of the deposit into an approved scheme in terms of the 2011 Regulations.

12. The Tribunal agrees with the observation made in the original Tribunal's decision that ignorance of the terms and requirements of the 2011 Regulations is no excuse. No mitigation of the failure to comply was provided thereby.
13. No evidence, other than assertion during the course of the CMD, was provided as to the Respondent's personal circumstances that could be adduced as mitigation. The Tribunal was therefore unable to have regard to personal circumstances as being an element of mitigation.
14. The Respondent had not registered as a landlord as required by legislation, until forced to do so. It is necessary for the protection of tenants for landlords to comply with the relevant legislation.
15. The deposit has still not been returned to the Applicant. A maximum penalty of three times the deposit amount is therefore in effect only a penalty for two times that amount (subject to any potential Small Claims action the Applicant may wish to raise, if so advised).
16. The Applicant again gave evidence of the refusal of the Respondent and his mother to engage with her and to return the amount of the deposit that was rightfully due to her.
17. In the circumstances, the Tribunal considers that the maximum penalty of three times the deposit is an appropriate sanction to impose.

Decision

18. For the foregoing reasons, the Tribunal finds that the Respondent has breached his obligation under Regulation 3 of the 2011 Regulations. It therefore orders the Respondent to make payment to the Applicant of the sum of £2250 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.

Maurice O'Carroll

Legal Member/Chair

Date

6 September 2019