

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/19/0930

Re: Property at 57 Millburn Avenue, Dumfries, DG1 4BG ("the Property")

Parties:

**Mr Damon Snedden and Ms Sarah Harkness, residing together at 26
Cairnsmore Crescent, Dumfries, DG2 9QA ("the Applicants")**

Mr Steven Leslie, 36 Stakeford Street, Dumfries, DG2 0AQ ("the Respondent")

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that**

Background

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 103 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ("the 2017 Rules") seeking an order for payment of the deposit in relation to a private residential tenancy for the Property.
2. The application contained a copy of the Tenancy Agreement and copies of text messages showing the end date of the tenancy.
3. The Application narrated that a tenancy had been entered into; that a deposit of £400 had been paid to the Applicant; that the tenancy had ended; that the deposit had not been paid into a tenancy deposit scheme; and that the deposit had not been returned to the Applicants.

4. The First Applicant, Mr Snedden attended the case management discussion, with his representative, Mr Maxwell from the Citizens Advice Bureau. Mr Maxwell confirmed that he also acted for the Second Applicant however she was not in attendance today. There was no appearance from the Respondent.
5. Notice of today's hearing had been served on the Respondent by sheriff officers on 29 April 2019. Further the Respondent had contacted the Tribunal Office on 2 May 2019 to advise that he would not be attending today's hearing. He advised that he was not seeking to have the case postponed. I was satisfied that he had had notice of today's hearing and I was therefore prepared to proceed with today's hearing in the absence of the Respondent.

The Hearing

6. The Applicant advised that he had entered into the lease on 29 August 2018. It was a joint lease with himself and his partner, Ms Harkness. The landlord was the Respondent. He had paid a deposit of £400 to the Respondent at the commencement of the tenancy.
7. The Applicant had given notice that they were ending the tenancy on 8 January 2019. Notice was given to the Respondent by text message. There was nothing in the tenancy agreement dealing with how notice should be given. He advised that he and the second Applicant vacated the tenancy 10 January 2019.
8. He had contacted the Respondent at that time to ask when he could get his deposit returned to him. The Respondent advised that it would be needed to pay for that month's rent. Reference was made to the text messages dealing with that issue.
9. The Applicant advised that the rent was payable in advance on the 29th of month and he had paid the rent for January on the 29th of December 2018. The tenancy agreement at clause 12 sets out that rent is payable on the 29th of month in advance. He was not due to pay any further rent until 29 January 2019. While he may have owed one further week's rent if he were to give 28 days' notice on 8 January 2019 it did not equate to all of the deposit.
10. He advised that he was unable to speak to the Respondent about the repayment of the deposit as the Respondent was aggressive towards him when he called and spoke to him on 25th January 2019. He advised that the Respondent told him that the deposit was in a tenancy deposit scheme, but this turned out not to be the case, as he had checked with the main schemes and no one had any knowledge of it. Further the Respondent had not provided him with any information about the tenancy deposit and where it was held. He also advised that the Respondent is not a registered landlord and this remains the case even as at today's date.

11. Clause 14-18 deals with the payment of a deposit and what use it will be put to and how it will be repaid at the end of the tenancy. There is reference to the 2011 Tenancy Deposit Regulations in the tenancy agreement.
12. The Applicant referred to the text messages between himself and the Respondent, when he was trying to get his deposit repaid. He advised that he had texted him as he was quite aggressive to deal with and his partner is quite anxious and he did not want to cause her further stress.
13. The Applicant advised that he did not know much about the Respondent i.e. whether he had been a landlord for a long time or whether he leased out a lot of other properties. He advised that he had found the Property on Facebook. They had viewed the Property with the Respondent and then signed the lease agreement. He advised that there had been problems with the lighting in the kitchen as it did not work; there were no smoke alarms in the Property; and there were belongings of the previous tenant lying in the back garden including an old fridge with food in it. They had asked the Respondent to deal with these issues; however he failed to address any of them.
14. He advised that the failure to pay the deposit into a scheme had prejudiced him, he was entitled to an independent arbitration scheme to deal with issues of repayment of deposits and in this case he has not had access to this scheme in trying to recover his deposit.
15. He advised that the deposit has still not been paid back to him. He advised that the Respondent has breached the Tenancy Deposit Regulations and he was seeking an order of three times the amount of his deposit together also with repayment of his deposit.

Findings in Fact

I found the following facts to be established:

16. A tenancy agreement was entered into between the Applicants and the Respondent for the Property.
17. The tenancy agreement was entered into on 29 August 2018.
18. Notice to end the tenancy had been given to the Respondent on 8 January 2019.
19. The Tenancy ended on around 5 February 2019.
20. The application to the tribunal had been made on 18 March 2019.
21. Clause 12 of the tenancy agreement states that rent will be paid on 29th of each month in advance.
22. Clause 14 states that a security deposit of £400 will be paid by the tenants.

23. Clauses 15m - 18 make provision for what the deposit will be used for and when it will be returned.
24. Clause 18 refers to the Tenancy Deposit Schemes (Scotland) Regulations 2011.
25. That the deposit had been paid by the Applicants to the Respondent.
26. That the deposit had not been paid into an approved scheme.
27. That the Respondent had not repaid the deposit to the Applicants.

Reasons for Decision

28. The Tenancy Deposit Schemes (Scotland) Regulations 2011 set out a number of legal requirements in relation to the holding of deposits by landlords for tenants, and relevant to this case are the following regulations:-

Duties in relation to tenancy deposits

3.—(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the 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.

(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.

(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement— (a) in respect of which the landlord is a relevant person; and (b) by virtue of which a house is occupied by an unconnected person, unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.

(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.

Court orders

9.—(1) A tenant who has paid a tenancy deposit may apply to the sheriff for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.

(2) An application under paragraph (1) must be made by summary application and must be made no later than 3 months after the tenancy has ended.

10. If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—

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

(b) may, as the sheriff considers appropriate in the circumstances of the application, order the landlord to— (i) pay the tenancy deposit to an approved scheme; or (ii) provide the tenant with the information required under regulation 42.

29. The Respondent did not appear at today's hearing. I do not know therefore what his position to this application is.

30. I have decided the matter on the basis of the written and verbal information before me, which would tend to show that the Applicants paid the deposit that it was not paid into an approved scheme and it was not subsequently returned to them. This is in contravention of regulation 3 of the 2011 regulations.

31. From the information provided by the Applicant he was unable to either discuss the issue of the deposit with the Respondent at the end of the tenancy or importantly proceed to have the question of the deposit's return determined by an independent adjudicator. It is noted that the reason for the non-return of the deposit may be because the Respondent considered that there was outstanding rent due, however there was no statutory mechanism to properly consider this issue because the deposit had not been paid into a scheme and therefore the Applicants' are prejudiced and their deposit is not protected.

32. In considering what kind of landlord the Respondent is I have had regard to the fact that the lease agreement entered into is not in the correct format having regard to the legislation regulating private residential tenancies which was implemented on 1 December 2017.

33. From verbal evidence I was advised that the Respondent failed to deal with electrical lighting faults in the Property; failed to install smoke alarms in the Property; and failed to remove an old fridge and other items from the garden, all of which show a disregard for his duties as a landlord.

34. I note that he is not a registered landlord.

35. I note that the tenancy agreement makes reference to the 2011 Tenancy Deposit Regulations and therefore he cannot claim ignorance of the law.

36. I note that there is evidence that he was advised of the requirement to place the deposit into a scheme and he would appear to then have misled the

Applicants that it had been put in a scheme. However, he did not provide any information that that was the case. Further, from the investigations carried out by the Applicant it appears that the deposit has never been put in a scheme.

37. I can see no mitigation for the Respondent on the information before me other than the fact that the tenancy was of short fairly short duration, however given that the deposit has not been paid back, this is of no use to the Applicants.
38. The Respondent has indicated that he would not attend today's hearing but provided no reason as to why this was.
39. Considering all matters, it appears to me that the Respondent has a flagrant disregard for his duties as a landlord generally and importantly in this case for his duties as a landlord under the Tenancy Deposit regulations.
40. The failure to put the deposit into an approved scheme at any time, has prejudiced the Applicants throughout the duration of their tenancy, and thereafter. They have been prevented from accessing a system which may have allowed them to have their deposit returned to them, and failing which to have their dispute heard in a proper, regulated and impartial manner.
41. The Applicant describes a situation where the Second Applicant was anxious about matters and the Respondent had been aggressive in his dealings with the First Applicant, and therefore it would appear to be all the more important that they had access to an independent scheme to resolve any disputes.
42. I do not consider the Respondent's actions in this matter to be reasonable. I do consider that the Respondent should have been well aware of his duties.
43. As set out above Regulation 10 provides that if I am satisfied that the landlord did not comply with any duty in regulation 3, then I must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit.
44. I think that attitude of the Respondent towards his duties and the impact that this has had on the Applicants leads me to find that this is a sufficiently serious case and an award of a sum equivalent to two and a half times the deposit itself, namely £1000 would be reasonable in all the circumstances.
45. In this case I have also decided to make an order under regulation 10 (b) (i) and order the Respondent to— (i) pay the tenancy deposit to an approved scheme within 30 days from the date of the Order. I have decided to make this order, as I am aware that the Respondent has not repaid the deposit to the Applicants. The Respondent had indicated that he considered there was outstanding rent due by the Applicants, if that is indeed the case, then that matter can be adjudicated through an approved scheme. It will ensure that both parties have an opportunity to present their case and have an impartial determination on this matter.

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
Ms Melanie Barbour

21. 5. 19

Legal Member/Chair

Date