



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

Chamber Ref: FTS/HPC/PR/20/0989

Re: Property at 3 Cairn Steading, Upper Powburn, Fordoun, Laurencekirk, Aberdeenshire AB30 1NJ (“the Property”)

Parties:

James McGouldrick and Mrs Lorraine McGouldrick, residing together at Ardoe Lodge, Easter Ardoe, Aberdeen, Aberdeenshire, AB12 5XT (“the Applicants”)

And

Alan Benton, residing at 8 Gardenston Street, Laurencekirk, Aberdeenshire, AB30 1UG (“the Respondent”)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has breached his obligations under regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Background

1. On 1 November 2016 the respondent let to the applicants the property at 3 Cairn Steading, Upper Powburn, Fordoun, Laurencekirk, Aberdeenshire AB30 1NJ. A Tenancy agreement was entered into which required payment of a deposit of £1,200.00. The tenancy ended on 29 February 2020.

The Case Management Discussion

2. A Case Management Discussion took place before the Tribunal by telephone conference at 2.00pm on 30 September 2020. The Applicant and the respondent were both present. Neither is represented.

3. The respondent's position remains that he believed the funds were not a deposit, but were a maintenance fund. Although the respondent took a deposit from the applicants, he knew nothing of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("The 2011 Regulations"). He preserved the deposit in an account in his own name and did not know how to refund the deposit monies at the end of the period of let.

4. Both parties agree that the deposit was not lodged with an approved tenancy deposit scheme within 30 days of commencement of the tenancy. Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 tells me that, in light of that admitted fact, I must make a payment order against the respondent. I can dispose of this case today, without the need for a further hearing.

Findings in Fact

5. In November 2016 the respondent agreed to let the dwelling-house at 3 Cairn Steading, Upper Powburn, Fordoun, Laurencekirk, Aberdeenshire AB30 1NJ to the applicants. A tenancy agreement was entered into setting out the agreed rental and requiring a deposit of £1200.00.

6. Before taking entry the Applicants paid a deposit payment of £1,200.00 to the respondent. The respondent placed that money in an account in his name alone. Parties' agreed to end the tenancy on 29 February 2020. The respondent retained the deposit.

7. Clause 10 of the lease signed by both parties summarises the requirements of the 2011 Regulations

8. A case management discussion took place on 17 August 2020. My fellow legal member of the First tier Tribunal for Scotland found in fact that the deposit had been paid to the respondent, and that the deposit funds had never been paid into an approved scheme. The hearing was continued to today to enable the respondent to refund the deposit money to the applicant

9. On 17 August 2020 the Respondent refunded the deposit funds to the applicant's solicitor.

Reasons for Decision

10. It is beyond dispute that a deposit of £1200.00 was paid at the commencement of the tenancy. On the facts as I find them to be, the deposit was not paid into an approved scheme when it should have been and rested for almost five years in the respondent's name alone.

11. This might have been the respondent's first experience as a landlord, but the lease he signed as landlord reiterated the requirements of the 2011 Regulations.

12. The respondent acknowledges his error. The respondent has no history of breaches of the 2011 Regulations. A full accounting for the deposit has now been made, but only after the earlier case management discussion in this application.

Against those mitigating factors I must balance the undisputed fact that the deposit was unprotected for almost five years, and that the respondent made no attempt to refund the deposit monies until he had attended the first case management discussion.

13. The Applicant asked me to make a payment order. The purpose of the order is not to enrich the applicant. The purpose of the order is to punish the respondent; to mark society's displeasure; to protect society and to ensure the enforcement of the 2011 Regulations in the future.

14. The amount of deposit was £1200.00. For almost 5 years the deposit was not protected. A payment order equivalent to the 1.5 times the value of the deposit reflects the seriousness of the breach of the 2011 Regulations.

15. The appropriate level of payment order is £1,800.00

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment to the Applicant of One Thousand Eight Hundred pounds (£1,800.00) within 14 days of service of this order.

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.

P Doyle

Legal Member

30 September 2020