



Amended Decision of a Case Management Discussion of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ('the Regulations')

Chamber Ref: FTS/HPC/PR/19/1310

Re: Property at 1/3 Pentland Drive (previously recorded as 3/3), Edinburgh EH10 6PU
(**'the Property'**)

Mrs Johanna MacKenzie, 3 Elm Cottages, Elm Row, Lasswade, EH18 1AG
(**'the Applicant'**)

Mr Paul Forry, 28 Winton Gardens, Fairmilehead, Edinburgh EH10 7ET
(**'the Respondent'**)

Tribunal Members:

Joseph C Hughes	(Legal Member) [sitting alone]
Andy Dick	(Clerk of Tribunal)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (**'the Tribunal'**) determined that an Order against the Respondent for payment of ONE THOUSAND AND SEVENTY ONE POUNDS (£1071) Sterling.

BACKGROUND

1. The Applicant did not attend the Case Management Discussion ('CMD'). Her representative, Mr Peter Toye, attended and made submissions to support the application.
2. The Respondent attended. He also made oral submissions to support his position.
3. The Applicant was a previous Tenant of the Property. The Respondent is Landlord of the Property in terms of a tenancy between the parties with an entry date of 02/12/2017.
4. The lease in this case was a short assured tenancy. It should have been a Private Residential Tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016.

5. The Applicant paid a tenancy deposit of £790 to the Respondent at the outset of the tenancy. This was banked by the Respondent but never placed in a tenancy deposit scheme. The Respondent stated that the tenancy deposit was placed in a separate account from his own private account. This account was however solely controlled by the Respondent.
6. The Applicant's deposit was effectively unprotected since December 2017 until March 2019, a period of sixteen months. The Respondent stated this was an administrative error on his part.
7. The Applicant left the tenancy on 27/03/2019.
8. It is accepted that both parties conducted themselves appropriately throughout the tenancy.
9. The Respondent paid the Applicant £509 on 01/04/2019. He retained the sum of £281 from the original deposit.
10. The Applicant made it clear in her communications with the Respondent that she would be content not to take the matter further if the original tenancy deposit of £790 was returned to her in full. The Respondent did not accept this suggestion and elected to pay the Applicant the said £509.

THE HEARING

11. The Tribunal heard evidence from both attendees. The Applicant invited me to award three times the tenancy deposit as a suitable sanction. The Respondent appeared to struggle to fully grasp that the Applicant had a legal right to bring this case before the Tribunal. He described making the application as 'opportunistic, malicious and vexatious' in his written submissions. At no time did the Respondent formally apologise for his administrative error either in writing or at the CMD. The Respondent is well aware of the need to place tenancy deposits into a scheme. Within his written productions it is clear the Respondent has placed previous tenancy deposits into a suitable scheme.

FINDINGS OF FACT

12.
 - (a) The Applicant was Tenant of the Property and the Respondent is Landlord of the Property in terms of the lease between the parties with an entry of 02/12/2017;
 - (b) The lease is a short assured tenancy. It is accepted it should have been a Private Residential Tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016. Nevertheless it was a tenancy;
 - (c) The Applicant paid a deposit of £490 to the Respondent at the outset of the tenancy;
 - (d) The Deposit was banked by the Respondent in a separate bank account operated by him but not within his own private bank;
 - (e) The Deposit was never lodged with an approved tenancy deposit scheme;
 - (f) The Respondent accepts that he failed to pay the Deposit to the scheme administrator of an approved scheme.
 - (g) There is a breach of the Landlord's duties in respect of the Tenant Deposit.

- (h) The Respondent is not permitted to withhold the tenancy deposit and is in breach of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

REASONS FOR DECISION

13. The Respondent admits that he failed to lodge the tenancy deposit as required by law in an approved scheme. He explained that this was an administrative error on his part. This deprives the Applicant from seeking recovery of the deposit through the scheme. It is not disputed that the Respondent is in clear breach of his duties as a Landlord in respect of the tenancy deposit.

14. It is appropriate that Order for Payment be granted. The Respondent should pay to the Tenant an amount to reflect to circumstances of the case. The Tribunal selected a figure of £1071 to be the appropriate amount. This is calculated as the difference between the original deposit of £790 and what the Applicant received on 01/04/2019 namely £509. This difference is £281. IN addition to this balance I considered an additional amount, the equivalent of one times the tenancy deposit, namely £790. The total, made up of £281 and £790, is £1071.

15. The Tribunal considered the failure to lodge the tenancy deposit to be a significant breach of the Regulations having regard to the period from December 2017 until March 2019, some 16 months. The error came to light only when the Applicant made an enquiry where her deposit was.

DECISION

16. The Tribunal granted an Order for payment against the Respondent:

- (i) To pay the Applicant the sum of ONE THOUSAND AND SEVENTY ONE Pounds (£1071) Sterling in terms of Regulation 10(a) of 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.

Joseph C Hughes

19th August 2019

Legal Member/Chair

Date