



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Chamber Ref: FTS/HPC/PR/18/1400

Re: Property at 110 1F Forest Road, Selkirk, TD7 5DG (“the Property”)

Parties:

Mr Nathan Johnson, 110 1F Forest Road, Selkirk, TD7 5DG (“the Applicant”)

Mr Marc Everett, Netheravon, Abbotsford Place, Galashiels, TD1 3DA (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member)

Decision (in absence of the Applicant)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted against the Respondent in the sum of ONE HUNDRED AND FIFTY POUNDS (£150) STERLING

- **Background**

An application was submitted by the Applicant under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 (“the Regulations”), dated 29 May 2018. The application sought payment against the Respondent in the sum of £900, being three times the amount of the Applicant’s deposit under his tenancy agreement.

- **Case Management Discussion**

A Case Management Discussion took place on 10 August 2018. The Respondent appeared personally. The Applicant was neither personally present nor represented. The Tribunal office attempted to contact the Applicant by telephone prior to the start of the Case Management Discussion but he failed to respond to

the call. The Case Management Discussion proceeded in absence of the Applicant under Rule 29 of the Regulations.

The Respondent advised the Tribunal that the Applicant had left the Property on 12 June 2018. He advised that the Applicant's deposit of £300 had been returned to him in full on that day. The Respondent admitted that the deposit had not been placed in a tenancy deposit scheme as he was unaware that there was any legal obligation to do so. He showed evidence to the Tribunal that the deposit held for the current tenant has been lodged with My Deposits Scotland. The Respondent advised that he is a registered landlord with the Local Authority and endeavours to abide by the law at all times. He produced evidence of a valid gas safety certificate in force at the property. The Respondent advised that his failure to lodge the deposit was an unintentional error, and one which he has since learned from.

No submissions were heard from the Applicant, given his failure to appear or be represented. He had emailed the Tribunal office on 27 June 2018 to advise that he had left the Property, had received his £300 deposit back, and wished to continue with his application.

- Findings in Fact

1. The parties entered into a short assured tenancy which commenced on 17 November 2017 and ended on 12 June 2018.
2. The Applicant paid to the Respondent a deposit in the sum of £300 at the start of the tenancy.
3. The Respondent failed to lodge the deposit in one of the three approved tenancy deposit schemes in Scotland.
4. The Deposit was returned to the Applicant in full on 12 June 2018.
5. The Application before the Tribunal was served on the Respondent on 10 July 2018 by Sheriff Officer.
6. The Respondent was in breach of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

- Reasons for Decision

The Tribunal was satisfied that the Respondent was in breach of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011, in that he failed to pay a tenancy deposit into an approved scheme within 30 working days of the beginning of the tenancy. Accordingly, the Tribunal was satisfied that an Order must be made against the Respondent under Regulation 10(a) of the said 2011 Regulations.

The Tribunal was satisfied that this was an unintentional error on the part of the Respondent. The Respondent had repaid in full the deposit to the Applicant at the termination of the tenancy and prior to service of this application on him. The Tribunal was satisfied that the deposit under the current tenancy at the Property was protected in an approved scheme, and that the landlord was now complying with the Tenancy Deposit Schemes (Scotland) Regulations 2011.

On the basis of the application before it, and the submissions made at the Case Management Discussion, the Tribunal was not satisfied that there was any compelling reason before it to impose a penalty on the higher end of the scale.

- Decision

The Tribunal granted an order for payment against the Respondent in the sum of ONE HUNDRED AND FIFTY POUNDS (£150) STERLING.

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.

Fiona Watson

Legal Member/Chair

10/8/18

Date