



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

Chamber Ref: FTS/HPC/PR/19/1585

Re: Property at 489 Clifton road, Aberdeen, AB24 4HH ("the Property")

Parties:

**Miss Claire Nowecki, Deemouth Business Centre Unit 1/2, South Esplanade
East, Aberdeen, AB11 9PB ("the Applicant")**

Mr Paul Back, 489 Clifton Road, Aberdeen, AB24 4HH ("the Respondent")

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision

Background

- 1 By application dated 21st May 2019 the Applicant sought an order for payment under regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 ("the 2011 Regulations") due to the Respondent's failure to lodge her deposit with an approved tenancy deposit scheme. The Applicant submitted the following documents to accompany her application:-
 - (i) Copy Tenancy Agreement between the parties dated 1st July 2017;
 - (ii) Copy Notice to Quit from the Respondent;
 - (iii) Copy Security Deposit Deduction form;
 - (iv) Email correspondence between the Applicant and Respondent; and
 - (v) Copy Letter from Amandine Clerc to Aberdeen City Council dated 21st May 2019 confirming Applicant's stay for period 28 February 2019 to 16th March 2019.
- 2 By Notice of Acceptance of Application dated 5th June 2019 the Legal Member of the Tribunal with delegated powers of the Chamber President

determined that there were no grounds for rejection of the application. A Case Management Discussion was therefore assigned for 19th July 2019.

- 3 A copy of the application together with notification of the Case Management Discussion was served upon the Respondent by Sheriff Officers on 14th June 2019.
- 4 The Respondent submitted written representations by emails dated 28th June 2019 and 17th July 2019. The representations consisted of the following:-
 - (i) Screenshots of Whatsapp messages between the Applicant and Respondent;
 - (ii) Copy Email correspondence between the Applicant and Respondent
 - (iii) Photographs of flat inspection
 - (iv) Security Deposit deduction statement
 - (v) Notice to Quit served upon the Applicant
- 5 By email dated 16th July 2019 the Applicant submitted the following written representations:-
 - (i) Case notes from Citizen Advice Bureau
 - (ii) Copy email correspondence between the Applicant and Respondent
 - (iii) Copy correspondence between the Applicant and the Council Tax department at Aberdeen City Council
 - (iv) Copy interview notes with Homelessness Team at Aberdeen City Council
 - (v) Security Deposit Deductions Statement and accompanying email from Respondent

The Case Management Discussion

- 6 The Case Management Discussion took place on 19th July 2019. The Applicant was present and accompanied by Ruth Watts as a supporter. The Respondent was present.
- 7 The Legal Member explained the purpose of the Case Management Discussion and the grounds upon which the application was sought. She explained that it was not for the Tribunal to make a determination what deductions may be justified from the deposit. She explained that this was an application raised under the Tenancy Deposit Scheme (Scotland) Regulations 2011. The matter the Tribunal required to determine was

therefore whether the Respondent had complied with his duties under those Regulations and if not, what level of sanction would be appropriate.

8 Both parties in their verbal submissions raised matters regarding the alleged loss suffered by the Landlord, the circumstances around the ending of the tenancy and how they had been affected by the proceedings. Reference was also made to personal circumstances, and the impact that the case before the Tribunal could have on them financially. The Legal Member stressed however that her remit was to look at the circumstances surrounding the tenancy deposit. The submissions of relevance to this point are summarised as follows:-

- (i) Mr Back explained that he had previously been a Landlord many years ago. He had only rented the property out twice as whole. He admitted he had been negligent in knowing about the tenancy deposit scheme and had not kept up to date. He was not a professional landlord but he had endeavoured to handle the deposit professionally. He had placed the deposit in a utilities account for the duration of the tenancy. He confirmed that there had been no malice on his part, he was simply unaware of the duty to place the deposit in a scheme.
- (ii) Ms Nowecki confirmed that she had paid the deposit of £300 but had not received confirmation from Mr Back that it had been paid. She wasn't aware of the tenancy deposit scheme. She had submitted the application to the Tribunal after going to see the Citizens Advice Bureau for advice and help. At the end of the tenancy Mr Back had sent the schedule of deductions and returned the sum of £24. She had no opportunity to dispute this as he had told her that was the end of the correspondence.

9 On the basis of the submissions from the parties, the Legal Member advised that she was content that the landlord was in breach of the requirement under regulation 3 of the 2011 Regulations to lodge the deposit with an approved scheme. The question for the Tribunal therefore was what level of sanction would be appropriate. The Legal Member asked the parties to address her on this point and the submissions of relevance to the Tribunal's consideration of the matter can be summarised as follows:-

- (i) The Respondent advised that he was not a professional landlord. He had registered as a landlord and had complied with other requirements, such as gas safety checks. He had held the deposit securely and had properly carried out a deductions process with an inventory and a final schedule. He apologised for not placing the deposit in a scheme. He thought he had done everything correctly.

In his view a sum equivalent to the deposit of £300 would be appropriate.

- (ii) Ms Nowecki advised that she felt there were other things that Mr Back had not done properly, for example the Notice to Quit served upon her. She felt in the circumstances a sum of £600 would be appropriate.

Findings in Fact

- 10 On the information before the Tribunal the Legal Member found the following facts to be established:-
- 11 The parties entered into a Tenancy Agreement for the property dated 1 July 2017 which commenced on that same date.
- 12 Clause 2(a) of the Tenancy Agreement requires a deposit of £300 to be paid in advance.
- 13 The Applicant paid the deposit to the Respondent. The deposit was held by the Respondent in a bank account.
- 14 On or around 6 March 2019 the Respondent repaid £24 of the deposit to the Applicant.
- 15 The Respondent failed to pay the deposit into an approved tenancy deposit scheme due to ignorance of his statutory duty under regulation 3 of the 2011 Regulations.

Reasons for decision

- 16 The Legal Member had noted at the outset of the Case Management Discussion that the question before it was not whether the Respondent's deductions from the deposit were justified and whether therefore the Applicant was entitled to receive her deposit in full. That was a separate matter. The application before the Tribunal proceeded under the 2011 Regulations. Accordingly the issue for the Tribunal to determine was whether the Respondent had complied with the duties imposed on him under those regulations, and if not, what penalty should be imposed.
- 17 The 2011 Regulations specify clear duties which are incumbent on landlords in relation to tenancy deposits. Regulation 3 requires a landlord to pay any deposit received in relation to a relevant tenancy to an approved tenancy deposit scheme within thirty working days of the beginning of the tenancy. The deposit must then be held by the scheme

until it can be repaid in accordance with the requirements of the Regulations following the end of the tenancy.

- 18 It was clear from the evidence before the Tribunal that the Respondent had not lodged the tenancy with an approved scheme. He had been candid on this point during his verbal submissions at the Case Management Discussion. He was therefore in breach of Regulation 3.
- 19 Regulation 9 provides that any tenant may apply to the Tribunal for an order where the landlord has not complied with the duty under regulation 3. If satisfied that the landlord has failed to comply, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. Accordingly having been satisfied that the Respondent had failed to comply, the Tribunal then had to consider what penalty to impose, having regard to the particular facts and circumstances of the case before her. The Tribunal considered that it was able to determine this issue without the requirement for a hearing as the substantive matters were agreed between the parties.
- 20 The Tribunal considered the need to proceed in a manner which is fair, proportionate and just, having regard to the seriousness of the breach. In doing so, the Tribunal took into account the fact that the Respondent was not a professional landlord, and had not been aware of the requirement to lodge a deposit with an approved scheme. The failure to lodge the deposit was therefore due to ignorance on the part of the Respondent, rather than a wilful failure to comply. However the Tribunal was aware that ignorance of the regulations was not a defence and it was reasonable to expect the Respondent as a Landlord to have acquitted himself with the knowledge of the duties and responsibilities that were incumbent upon him in that role.
- 21 The Tribunal also had to consider the purpose of regulation 9, namely to penalise landlords to ensure they comply with the duty to protect and safeguard tenancy deposits. The Tribunal took into account the fact that the deposit had been unprotected for the entirety of the tenancy. It also took into account the fact that at the end of the tenancy the Applicant had not been given the benefit of independent arbitration through a scheme dispute resolution process which would have been offered had her deposit been lodged with a scheme. Instead the Respondent had full control over the scale of deductions which left the Applicant in a difficult position, faced then with having to pursue alternative remedies in order to dispute the costs. The Applicant had therefore been prejudiced as a result of the Respondent's breach.
- 22 The Tribunal was not satisfied that the particular circumstances of the case warranted the maximum award of three times the amount of the deposit. However the Tribunal did consider having regard to the relevant considerations as set out above that an amount more than the deposit was

justified. The Tribunal therefore considered that a sanction of £500 would be appropriate in the particular circumstances of this case.

- 23 The Tribunal therefore made an order for payment by the Respondent in the sum of £500.

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.

Ruth O'Hare

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Legal Member/Chair

19/7/19

Date