



**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/19/1593

**Re: Property at Springfield, 198 Lednabirichen, Dornoch, Sutherland, IV25 3NE
("the Property")**

Parties:

**Mr Stewart MacLeod Bowman, 3 Ben Bhraggie Drive, Golspie, KN10 6SX ("the
Applicant")**

**Mr Shaun Hillin, Shandwick House, Chapel Street, Tain, IV19 1EL ("the
Respondent")**

Tribunal Members:

Helen Forbes (Legal Member) and Angus Lamont (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that an order for payment should be granted in favour of
the Applicant in the sum of £500**

Background

By application under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules") received dated 24th February 2019, the Applicant applied for an order in terms of Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Regulations"). The parties entered into a Short Assured Tenancy Agreement, commencing on 28th August 2017 and ending on 26th March 2019. The agreement provided at clause 10 that a security deposit of £850 was payable to the landlord. The Applicant paid a sum of £850 on 15th August 2017, which he believed to be a tenancy deposit. This was not lodged with a tenancy deposit scheme by the Respondent. The monthly rent of £850 was paid by the Applicant's employer direct to the Respondent, by a third party, throughout the term of the tenancy agreement.

A Case Management Discussion took place on 18th July 2019. At that time, the Respondent said that the payment made was not a deposit, and that, although he had paid back a sum of £600 at the end of the tenancy, this was in respect of overpaid rent. The Applicant's position was that email correspondence would show that a deposit was referred to prior to the tenancy agreement commencing, and that there had been email correspondence at the end of the tenancy referring to money being held back from the deposit in respect of issues that had arisen at the end of the tenancy.

It was agreed at the Case Management Discussion that the parties entered into a short assured tenancy agreement commencing on 26th August 2017 at a rent of £850 per month and that the lease refers to a security deposit in the amount of £850. It was agreed that the tenancy ended around 26th March 2019 and that keys were returned on 4th April 2019. It was also agreed that the property was leased by the Applicant as an individual but the costs were to be paid by his employer, and that a third party was responsible for making the payments to the Respondent.

By email dated 13th August 2019, the Applicant lodged documents, including a timeline of events, email correspondence between the parties and between the Applicant and the Respondent's wife, an invoice dated 16th August 2019 that referred to a payment of £850 as a tenancy deposit, correspondence with the Applicant's employer regarding payment of rent, and a statement of payments made.

By email dated 20th August 2017, the Respondent made brief representations to the Tribunal stating that the Applicant had never paid any rent, that the bank statement and letters were not in his name and the email and invoice submitted by him was for £0.00, so he was not sure why it was submitted.

The Hearing

A hearing took place on 26th August 2019 at the Mercure Hotel, Church Street, Inverness. Both parties were in attendance. The Applicant was accompanied by Sarah Bowman as a Supporter.

Evidence by the Applicant

Mr Bowman referred to the documents he had lodged. The invoice dated 16th August 2017 had been sent to him through an automatically generated computer programme by the Respondent. It was, in effect, a receipt for the payment made by the Applicant to the Respondent the previous day and it referred to 'Deposit taken for [the Property address]'. He referred to the emails between himself and the Respondent's wife prior to the tenancy commencing where the Respondent's wife had mentioned a tenancy deposit of £850. The Applicant also referred to his bank statement that showed a payment of £850 had been made to the Respondent on 15th August 2017. There was some discussion about the spread-sheet provided by the third party that dealt with payments of rent. It was not clear to the Tribunal why the rental payments were, towards the end of the tenancy, described as payments from the 1st to the end of the month, when initial entries referred only to the month. The Applicant was not able to answer questions on this matter as he had not compiled the spread-sheet. The Applicant confirmed that the payment of £850 was

the only payment he made to the Respondent, as all rental payments were made by his employer through the third party. He confirmed that the payment of £850 in terms of the 'deposit' was made by him to expedite matters and to ensure he secured the tenancy, and it was refunded to him by his employer. The Applicant pointed out that the lease referred to a security deposit. There was some discussion at the end of the lease about the Respondent withholding rent because of repairs, but it was agreed that a sum of £250 withheld by the Respondent was to be treated as payment for the fact that the Applicant retained the keys to the Property until 4th April 2019.

Evidence by the Respondent

The Respondent said he had not considered the tenancy a private tenancy between individuals. He had considered it a tenancy with the Applicant's employer. The Applicant was looking for accommodation and used his employer as a referee. The Respondent believed it was a commercial arrangement. Responding to questions from the Tribunal, the Respondent said he did not have a written agreement with the Applicant's employer. He had emails but he was unable to retrieve them now. He said he had been a landlord for 10 years. He has two houses that he lets and commercial properties. When putting this tenancy agreement in place, he used a generic lease from the internet and did not pay attention to its terms. Although the lease stated a security deposit was payable, he did not consider that the payment made by the Applicant was a deposit, although he described it as 'a deposit against rent'. In effect, his position was that any money taken at the start of the tenancy was insurance against non-payment of the last month's rent. He said he had never taken a deposit for either of his private properties in the past, and, consequently, he had not used the tenancy deposit schemes. He said, in response to questions from the Tribunal, that he was aware of the existence of the schemes.

The Respondent said he had not paid much attention to the documents lodged. With regard to the invoice sent to the Applicant on 16th August 2018, the Respondent was now accepting that he had sent it, but, although he had described the payment as a 'deposit', it was just a term he used and he considered it a payment towards the final rent.

The Respondent said that, although his wife had initially corresponded with the Applicant about the terms of the tenancy, and had described in correspondence the requirement for a deposit to be paid, she had nothing to do with his letting business and he couldn't speak for her or explain why she had used that term.

Both parties referred to disagreement over damage to the Property at the end of the tenancy. The Tribunal clarified that this could not form any part of the hearing and that these matters were outwith its remit and not relevant to the issues before it.

Level of award to be made

Parties were given an opportunity to make representations to the Tribunal on the level of any award to be made if the Tribunal found a breach of the Regulations. The Respondent said that the Applicant had not made any losses as his company had paid the deposit and rent. The Applicant said he did not wish to make any

representations on an amount, and that he was looking for the Respondent to be held to account for his actions.

Findings in Fact

1. The parties entered into a Short Assured Tenancy Agreement, commencing on 28th August 2017 and ending on 26th March 2019.
2. The Applicant paid a sum of £850 on 15th August 2017. This payment was a deposit.
3. The monthly rent of £850 was paid by the Applicant's employer direct to the Respondent throughout the term of the tenancy agreement.
4. A sum of £600 was returned to the Applicant's employer by the Respondent at the end of the tenancy by cheque.
5. The deposit was not paid into a tenancy deposit scheme by the Respondent, which was a breach of Regulation 3.

Reasons for Decision

The Tribunal considered the payment made was a deposit. The Tribunal was not impressed that the Respondent had not seen fit to familiarise himself with the documentation submitted by the Applicant in advance of the hearing. The Tribunal considered it was a serious matter that the deposit was not lodged with a deposit scheme within 30 days of the tenancy commencing, as required by Regulation 3, and that the deposit had remained unprotected throughout the duration of the tenancy. The Tribunal took into account that the Respondent had not previously used a tenancy deposit scheme as he had not previously taken deposits from tenants. However, ignorance of the law is not an excuse and the Respondent said he was aware of the existence of the schemes. The Tribunal considered it fair and reasonable to grant an order for payment in favour of the Applicant in the sum of £500.

Decision

An order for payment is granted in favour of the Applicant 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.

Helen Forbes

Legal Member/Chair

26/8/19
Date