



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/19/1627

Re: Property at Little Wellfield, Ord Hill, Fortrose, IV10 8SH (“the Property”)

Parties:

Mrs Judith Wake, 16 Pembroke Way, Redcar, Cleveland (“the Applicant”)

Mr Norman Bremner, Mrs Paula Bremner, Bremclay House, Drum Farm, Avoch, IV9 8RP; Bremclay House, Drum Farm, Avoch, IV9 8RP (“the Respondents”)

Tribunal Members:

Helen Forbes (Legal Member) and Ahsan Khan (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 £300.

Background

This is an application dated 24th May 2019, made under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”). The Applicant is seeking an order in terms of Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”). The parties entered into a tenancy agreement that commenced on 8th January 2018, whereby the Applicant rented the Property at a rent of £600 per month. The Applicant paid a deposit of £600. The deposit was not paid into a tenancy deposit scheme in terms of the Regulations. The tenancy ended on 24th April 2019. The deposit was returned to the Applicant.

There was a Case Management Discussion on 23rd August 2019 at the Mercure Hotel, Church Street, Inverness. It was accepted by the Respondents that the deposit had not been paid into an approved scheme and that there had been a

breach of the Regulations. The case was set down for a hearing to determine the level of sanction to be imposed.

The Hearing

A hearing took place on 15th October 2019 at the Mercure Hotel, Church Street, Inverness. The Respondents were in attendance. The Applicant was not in attendance and was represented by Mr Christopher Wake.

Representations on behalf of the Applicant

Mr Wake said the Applicant was seeking three times the tenancy deposit in this case. The Applicant did not have any problems during the tenancy but she was concerned that the deposit was not lodged with a tenancy deposit scheme. She was also concerned and unhappy that the deposit was not returned until two or three weeks after the tenancy ended. The Applicant had asked the Respondents towards the end of the tenancy whether the deposit had been lodged in an approved scheme and was told that it had not been.

Representations on behalf of the Respondents

Mrs Bremner said that the Applicant's son, Mr Andrew Wake, refused to return the keys at the end of the tenancy until the deposit was returned, so that was why the deposit was a little late in being returned. There was no inspection of the house carried out before the deposit was returned. The keys were not returned and they had to break into the Property and change the locks.

In regard to the deposit scheme. Mrs Bremner said she was probably aware at some time of the existence of the regulations, but she did not lodge the deposit in a scheme. The deposit was kept safely in a safe in the home of the Respondents. Mrs Bremner referred to having suffered ill health during the tenancy, which included short term memory loss. She said the Respondents had not intended to become landlords. They had let a property to friends some years ago, but had not taken a deposit.

The Respondents accepted they were at fault in this matter, but felt that a sanction amounting to three times the tenancy deposit was unfair in the circumstances.

Response on behalf of the Applicant

Mr Wake said he was not aware of the situation in regard to the return of the keys for this property. That matter was dealt with by Mr Andrew Wake. In response to questions from the Tribunal, Mr Wake said he accepted it would be normal for the deposit to be retained until an inspection had been carried out, but he was not present at the time of these discussions and was not involved in this matter.

Findings in Fact

1. The parties entered into a tenancy agreement in respect of the Property, commencing on 8th January 2018 and ending on 24th April 2019.

2. The Applicant paid a deposit of £600 to the Respondents at the start of the tenancy.
3. The Respondents did not lodge the deposit with an approved tenancy deposit scheme, thus breaching Regulation 3.
4. The deposit was returned to the Applicant at the end of the tenancy,
5. The Respondent, Mrs Bremner, suffered ill-health during the tenancy, including suffering from short term memory loss.

Reasons for Decision

The Tribunal considered it a serious matter that the deposit had not been lodged within 30 days of the tenancy commencing, as required by Regulation 3. The deposit remained unprotected throughout the tenancy, for a period of a year and three months. The Tribunal took into account, as mitigating circumstances, the facts that the Respondents were not experienced landlords and that the Respondent, Mrs Bremner, had suffered from significant health issues during the tenancy, which affected her short term memory. The Tribunal considered it fair and reasonable in the circumstances to grant an order in the sum of £300, which is half of the tenancy deposit.

Decision

An order for payment is granted in favour of the Applicant in the sum of £300.

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.

H Forbes

Legal Member/Chair

15th October 2019
Date