



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/PR/19/1883

Re: Property at 6 Almond Crescent, Comrie, CRIEFF, PH6 2PA (“the Property”)

Parties:

**Mrs Deborah Moran, 9 The Cairns, Charlestown, DUNFERMLINE, KY11 3EP
 (“the Applicant”)**

**Mrs Fiona Connelly, Devon Riding Centre, Fishcross, ALLOA, FK10 3AN (“the
 Respondent”)**

Tribunal Members:

Virgil Crawford (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
 Tribunal”) determined that**

BACKGROUND

1. The Parties entered in to a tenancy agreement. It was agreed that the tenancy commenced on 9 February 2018 although the Applicant did not occupy the Property until on or around 26 March 2018. The tenancy agreement was signed on or around 26 March 2018;
2. A tenancy deposit of £750.00 and one month’s rent in advance – a further £750.00 - was to be paid by the Applicant. This was paid in instalments between 15 January and 9 February 2018;
3. The tenancy deposit was lodged with an approved scheme on 27 March 2018;
4. The tenancy ended on or around 26 April 2019;
5. The application to the Tribunal was made on 18 June 2019;

THE HEARING/CASE MANAGEMENT DISCUSSION

6. The Applicant attended the Case Management Discussion. She was supported by her son, Declan Moran. The Respondent attended. Neither Party was represented;
7. It was agreed that the tenancy commenced on 9 February 2018 but that the agreement was not actually signed until on or around 26 March 2018;
8. The tenancy deposit was lodged with an approved scheme within a day of the agreement being signed, it being lodged on 27 March 2019;
9. The Respondent was unable to confirm that she had timeously complied with her obligations in terms of Rule 42 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (the "TDS Regulations") by giving details to the Applicant as to when the deposit was lodged, the approved scheme with which it had been lodged, etc. She believed, however, that the approved scheme had intimated that to the Applicant directly;
10. The tenancy was now at an end and the deposit had been returned in full to the Applicant;
11. The Respondent advised that she is the landlord of 2 properties but has only been renting properties for approximately 2 years. She is not an experienced landlord. She believed that the obligation to lodge the deposit only applied once the tenancy agreement had been signed;
12. The Applicant had submitted various documents to the Tribunal relating to the condition of the Property and advised that, in her view, she had paid £750.00 over and above the amount she was in fact due in rent during the tenancy. She was wishing that money returned to her. The Respondent disputed that there had been any overpayment, advising that the Applicant vacated the Property without notice. The Tribunal advised that these matters were not relevant to the issue before the Tribunal which was restricted to whether or not the TDS Regulations had been complied with and, if not (as was agreed) the level of any order made against the Respondent;

FINDINGS IN FACT

13. The Tribunal found the following facts to be admitted or proved:-

- i. The Parties entered in to a tenancy agreement. It was agreed that the tenancy commenced on 9 February 2018 although the Applicant did not occupy the Property until on or around 26 March 2018. The tenancy agreement was signed on or around 26 March 2018;
- ii. A tenancy deposit of £750.00 and one month's rent in advance – a further £750.00 - was to be paid by the Applicant. This was paid in instalments 15 January and 9 February 2018;
- iii. The tenancy deposit was lodged with an approved scheme on 27 March 2018;
- iv. The Deposit was lodged 4 days later than it ought to have been;
- v. The deposit had been returned in full to the Applicant;
- vi. The Respondent had not complied with her obligations in terms of Rule 3 and 42 of the TDS Regulations but believed the relevant information in terms of Rule 42 had been provided to the Applicant by the approved scheme;
- vii. The tenancy ended on or around 26 April 2019;
- viii. The application to the Tribunal was made on 18 June 2019;

REASONS FOR DECISION

14. While the deposit had been lodged late, the following factors were relevant:-
 - i. The respondent was not an experienced landlord. While her ignorance of the exact terms of the TDS Regulations was no defence, her genuinely held belief was that she had complied with them;
 - ii. The deposit funds had not been disbursed and were always available to be lodged;
 - iii. The tenancy deposit was lodged within one day of the tenancy agreement being signed;
 - iv. The Tenancy deposit was unprotected for a very short period of time. Rule 3 of the TDS Regulations requires it to be lodged within 30 working days of the commencement of the tenancy. The tenancy commenced on 9 February 2018. 30 working days thereafter is 23 March 2018. The tenancy deposit was lodged with an approved scheme on 27 March 2018. It was, therefore, unprotected for 4 days;

- v. The tenancy deposit had been returned, in full, to the Applicant, the Respondent having made no claim on it at the end of the tenancy;
15. In the foregoing circumstances the Tribunal considered the failure on the part of the Respondent to be at the lower end of the scale of such cases. While she cannot plead ignorance of the law, her belief that the obligations on her commenced only after the agreement was signed was genuinely held, as was her belief that the approved scheme would intimate all relevant matters to the Applicant;
16. Having said that, the TDS Regulations exist to protect tenants against errant landlords, to ensure deposits are protected and to enable any disputes in relation to them to be resolved using the arbitration schemes provided for in the TDS Regulations. In those circumstances, while at the lower end of the scale of such matters, the Tribunal concluded that the failure of the Respondent should not go unpunished;
17. The Applicant appeared to be of the view that she could use the current application to the Tribunal for a breach of the TDS Regulations as a way of recovering what she perceived to be other sums due to her arising from the Tenancy. The Tribunal, however, required to confine its considerations to matters relating to the breach of the TDS Regulations only;
18. Having considered all relevant factors, the Tribunal considered an order for payment by the Respondent to The Applicant in the sum of £150.00 to be appropriate;

DECISION

The Tribunal for granted an order against the Respondent for payment of the sum of ONE HUNDRED AND FIFTY POUNDS (£150.00) STERLING to the Applicant:

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.

V. C

6 December 2019

Legal Member/Chair

Date