

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/PR/19/1898

Re: Property at 5 Glengate, Kirriemuir, Angus, DD8 4HD ("the Property")

Parties:

Mr Dean Sievwright, 14 Tannage Brae, Kirriemuir, Angus, DD8 4ES ("the Applicant")

Mrs Karen Duncan, 11 Mart Lane, Kirriemuir, Angus, DD8 4TL ("the Respondent")

Tribunal Members:

Jan Todd (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent did not comply with the duty in Regulation 3 to pay the deposit to the scheme administrator of an approved scheme and ordered the Respondent to pay the Applicant the sum of Three Hundred and Fifty pounds (£350).

Background

This was a Case Management Discussion to consider an application under Rule 103 for an order under Section 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011. (the 2011 Regulations) There was no written tenancy agreement. The Applicant had given the Respondent the deposit of £425 on 10th January 2019. The Respondent had allowed the Applicant to move into the property with an official entry date of 1st February 2019 and the Applicant advised he would be moving out at the beginning of the next month by giving 2 weeks' notice on 18th March 2019. From the written evidence lodged by the Respondent it is noted the Applicant gave only two weeks' notice of leaving and there was a series of whats app conversation showing that the Respondent had deducted 2 weeks' rent from the deposit as well as monies she claimed were due for a cleaning charge and redecoration. The

Respondent in her written response confirmed that she had not lodged the deposit into a scheme, that she had allowed the Property to be rented by the Applicant very quickly and she had not been on top of her paperwork so had not got around to preparing a tenancy agreement. The Respondent also advised she had health difficulties and was closing a business around the time the Applicant was moving in and this delayed her attending to the repayment of the deposit.

Prior to the CMD the Tribunal clarified that this was an application for an order in terms of Regulation 10 of the 2011 Regulations as the Applicant had originally asked in their application for a return of the deposit outstanding. The Applicant then through an e-mail from the Applicant's representative advised he was seeking the maximum penalty although he would accept what the Tribunal ordered.

The Discussion

The Applicant did not attend the CMD but his mother Mrs Fionna Sievwright attended as his representative. The Respondent was represented present and attended with her representative Ms Maylee Mason.

The Legal Member asked some preliminary questions to establish the facts that both parties appeared to be in agreement on namely that the tenancy existed for 2 months from 1st February to 1st April when the Applicant moved out as his partner obtained a tied cottage with a new job and they no longer required the tenancy of the Property. Both parties also agreed that the deposit paid was £425 and was not lodged in any tenancy deposit scheme.

Both parties confirmed that as the facts were not in dispute they were content that the Tribunal make a decision today and that the matter was not continued to a full hearing.

The Respondent then elaborated on why she had not lodged the deposit in an approved scheme, explaining that she had never had a tenant prior to this in her 8 years of letting out this property, who had been in a position to lodge a deposit and so was not used to lodging it in a scheme. She confirmed the current tenant has not given her a deposit either.

The legal member asked if she was aware of the need to do so and she advised that when she realised she had not done so, she was aware of the need to do this. Again she advised that due to pressure from her café business in Kirriemuir closing down due, she averred, to the adverse consequences of parking charges being introduced she had not organised to issue a proper lease for the Property to the Applicant and admitted she had been juggling too many things and was not on top of this matter. Her friend and representative advised that she was now supplied with a style of the private rented lease from the Government Website and would be using this in future.

The Legal Member explained that in terms of the 2011 regulations if the landlord has not complied with the duty in Regulation 3 then the Tribunal "must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit".

FACTS

1. The Respondent entered into a lease with the Applicant whereby the Applicant leased the Property from the Respondent from 1st February to 1st April 2019.
2. The rent due was £425 per month.
3. The deposit paid by the Applicant to the Respondent was £425.
4. The tenancy continued from 1st February 2019 until 2nd April 2019 when the Applicant quit having given 2 weeks' notice.
5. The Applicant was not at any time given information about where his deposit had been placed.
6. The Applicant raised an application for payment of an order under Rule 9 of the Regulations on 18th June 2019.
7. The Deposit was not placed in an approved scheme.
8. Part of the deposit has been returned to the Applicant namely £85 the rest having been kept by the Respondent as compensation for lack of 2 further weeks' notice, cleaning costs and redecoration costs.

REASONS

- The Tribunal found that the Respondent has failed to comply with the duty set out in Section 3 of the 2011 Regulations by failing to place the deposit in an approved scheme within 30 days of the beginning of the tenancy.
- That in terms of Section 10 of the 2011 Regulations the Tribunal is obliged to make an order that the landlord pay the tenant an amount not exceeding three times the amount of the tenancy deposit.
- The Tribunal considered that as there was no dispute over the facts and in accordance with the overriding objective to avoid delay, it was appropriate to make an order at the CMD.
- The Tribunal considered that the Respondent may have overlooked the need to lodge the deposit initially due to pressure of other matters such as her café business but notes that a responsible landlord should know that all deposits require to be lodged in an authorised scheme.
- The Tribunal noted that the Respondent has only returned part of the deposit claiming repayment for sums she claims are due. The purpose of lodging a deposit in an approved scheme is to allow both parties the protection of having any dispute over the return of the deposit adjudicated by the scheme administrators who act in an objective way. The tenant has been deprived of this facility.
- However the Tribunal notes that the tenancy was of a very short duration and the respondent was not acting out of malice. The respondent appeared reasonable and credible and admitted she should have lodged the deposit and seems to not have used a scheme before through not having needed to. She appeared to be experiencing stress at the time the Applicant had lodged the deposit and indeed throughout the period of this lease.
- The Landlord has retained part of the deposit and if the Applicant disputes any of this he can raise a separate claim under Rule 70,

however his representative did acknowledge that only 2 weeks' notice had been given and she would normally expect at least 28 days' notice to be given in most tenancy agreements.

- In the whole circumstances, considering the duration of the lease, and the time the deposit was unprotected the tribunal considers the award should be at the lower end of the penalty that can be ordered and the Tribunal considers the amount of £350 being approximately four fifths of the deposit as reasonable and appropriate.

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.

Jan Todd

Legal Member/Chair

2 September 2019

Date