

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 Regulation 10 of the Tenancy Deposit
Schemes (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/19/2009

Re: 16 Milton Mains Road, Parkhall, Clydebank G81 3NF("Property")

Parties:

**James Sheary, 52 Rossland Crescent, Bishopton, Renfrewshire PA7 5JJ
("Applicant")**

**Elaine Forsyth, 16 Milton Mains Road, Parkhall, Clydebank G81 3NF
("Respondent")**

Tribunal Members:

Joan Devine (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber)
("Tribunal") determined that the Respondent should pay to the Applicant the
sum of £575**

Background

The Applicant made an application in Form G ("Application") under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("Rules") claiming that the Respondent had failed to lodge a tenancy deposit in an appropriate scheme in breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("2011 Regulations"). The Application was received on 1 July 2019.

The Applicant provided a copy tenancy agreement which commenced on 1 February 2019 and a copy of an email from The Letting Protection Service Scotland ("LPS") dated 7 May 2019 in which it was stated that the deposit had been lodged with them on 3 April 2019.

A copy of the Application and notification of the Case Management Discussion fixed for 3 September 2019 was given to the Respondent by Sheriff Officer on 29 July 2019. That Case Management Discussion was postponed until 4 October 2019. Notification of that was given to the Parties by letter dated 26 August 2019.

Case Management Discussion ("CMD")

A CMD took place on 4 October 2019 at 10 am at Glasgow Tribunals Centre, 20 York street, Glasgow G2 8GT. The Applicant was present accompanied by Sarah Sheary as a supporter. The Respondent was present accompanied by David Allardice as a supporter.

At the CMD the Applicant told the Tribunal that the Respondent had entered the Property without consent. Thereafter the Applicant took the view that it was no longer safe to remain in the Property. He removed from the Property on 9 April 2019.

The Respondent told the Tribunal that for a period in April 2019 the Applicant was uncontactable. She told the Tribunal that the Applicant did not give the required 28 day's notice in order to terminate the tenancy. The Respondent told the Tribunal that she was aware of the requirement for the deposit to be lodged in an approved scheme but she was not aware that had to be done within a particular timescale and in any event she relied on her letting agent, Purple Bricks, to ensure any rule was complied with. The Respondent agreed that the tenancy commenced on 1 February 2019 and that the deposit of £1150 was paid on that date. She said that the tenancy was to be for a period of 3 months. She said that the Applicant knew when he commenced the tenancy that he would be unable to pay the rent for the third month. She referred to rent arrears.

The Applicant told the Tribunal that he, his wife and child required to enter into the tenancy for the Property as their own home had been flooded. He said that he had complained to the Respondent's Letting Agent about the Respondent entering the Property without permission and leaving a car in the driveway. He said that multiple people had keys for the Property and he did not feel it was safe for his family to remain in the Property. He said that whilst occupying the Property he had to continue to pay bills for his home. In the last month of the tenancy he could not find the funds to pay the rent. The Applicant told the Tribunal that he understood that the unpaid rent was taken from the Deposit. He said that the Respondent was not properly registered as a landlord with the local authority.

The Respondent produced to the Tribunal a copy email from the Local Authority which said that she had been registered as a landlord with effect from 10 January 2019. The registration number was 1025237/395/09041.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a tenancy agreement which commenced on 1 February 2019.

2. The Applicant paid to the Respondent a deposit of £1150 on 1 February 2019.
3. The tenancy came to an end no earlier than 9 April 2019.
4. The deposit was lodged with LPS on 3 April 2019. The deposit ought to have been lodged on 15 March 2019, which was within 30 working days of the commencement of the tenancy in order to comply with Regulation 3 of the 2011 Regulations.
5. The application was timeous in terms of Regulation 9 of the 2011 Regulations.

Reasons for the Decision

Regulation 10 of the 2011 Regulations states that if satisfied that the landlord did not comply with the duty in Regulation 3 to pay a deposit to the scheme administrator within 30 working days of the beginning of the tenancy, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. In this case the deposit had been lodged approximately 14 days late. The Respondent was a new landlord who relied upon her letting agent, Purple Bricks, to ensure she complied with her obligations. The Tribunal considered that whilst it was appropriate to make an award as there was a breach of regulation 3, it should be at the lower end of the scale. The Tribunal decided to award an amount equivalent to one half the deposit. In so doing the Tribunal sought to ensure that the sanction was fair, proportionate and just.

Decision

The Tribunal granted an Order for payment of £575 in terms of Regulation 10(a) of the 2011 Regulations.

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.

Joan Devine

Legal Member/Chair

Date

4 October 2019