



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Regulations 2 and 10 of the Tenancy
Deposit Schemes (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/20/2066

Re: Property at 66B Eskside West, Musselburgh, EH21 6RA (“the Property”)

Parties:

**Miss Megan Stewart, Mr Jordan Gilmour, 19/3 Westburn Grove, Wester Hailes,
EH14 2SA; 19/3 Westburn Grove, Wester Hailes, EH14 2SA (“the Applicants”)**

**Miss Morgan Morrison, 16a Stoneybank Gardens North, Musselburgh, EH21
6NB (“the Respondent”)**

Tribunal Members:

Alison Kelly (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for payment in the amount of £687.50
should be made.**

Background

The Applicants lodged an application on 23rd September 2020 under Rule 103 of the First-tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“the Rules”). They sought an award in terms of Rule 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011, (“TDS”) alleging that the Respondent had not placed their deposit in an approved Tenancy Deposit Scheme. The Applicants alleged that they had paid £550 by way of deposit to the Respondent.

The Applicants lodged:-

1. Copy of the Tenancy Agreement.
2. Proof of payment of the deposit.
3. Proof by way of text messages of the termination date of the tenancy.

Service of the application was affected on the Respondent by Sheriff Officers on 16th December 2020.

The Applicants subsequently raised a further application for return of the deposit, case reference FTS/HPC/20/2260.

Case Management Discussion

The Case Management Discussion (“CMD”) took place by teleconference on 5th February 2021. Both Applicants joined the conference, as did the Respondent.

The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules, and confirmed that the parties understood.

The Chairperson ascertained from the parties that the following facts were agreed:

1. The parties entered in to a tenancy agreement in relation to the property, commencing 14th June 2019;
2. The tenancy was terminated on 13th August 2020;
3. A deposit of £550 was paid by the Applicants to the respondent;
4. The Respondent did not lodge the deposit in an approved scheme in terms of the TDS;
5. This Application was lodged with the Tribunal on 23rd September 2020.

The Chairperson asked the Respondent to confirm why she had not lodged the deposit in an approved scheme. She said that she had been a first time landlord, she had never rented a property out before. She did not know that landlords for private lets had to put the deposit in an approved scheme. She thought that depositing it in a bank account and keeping it safe was appropriate. She did not learn about the requirement until after the tenancy had commenced. She registered as a landlord, but with the wrong local authority. By the time this was rectified she knew that the Applicants were intending to leave as she had been asked for a reference for them by a housing association. As they were leaving she didn't deem it necessary to lodge

the deposit. She also said that she had attended the property during the course of the tenancy because the washing machine was broken. She said that the house was not clean and she did not think the Respondents were treating it with respect. The Chairperson asked the Respondent what she did for a living. She said that she had worked on cruise ships, hence the reason she had rented out the property, but she was now a director of operations for a mortgage company.

Mr Gilmour said that in January 2020 he had received a letter from the local authority saying that the Respondent was not a registered landlord. He said that the property had not been unclean. The Respondent had said that she would carry out monthly inspections, but she never did.

Findings in Fact

1. The parties entered in to a tenancy agreement in relation to the property, commencing 14th June 2019;
2. The tenancy was terminated on 13th August 2020;
3. A deposit of £550 was paid by the Applicants to the respondent;
4. The Respondent did not lodge the deposit in an approved scheme in terms of the TDS;
5. This Application was lodged with the Tribunal on 23rd September 2020;
6. This application was lodged timeously;
7. The Respondent was a first time landlord.

Reasons for Decision

The deposit taken should have been deposited in terms of Regulation 3 of the TDS, and therefor the Respondent was in breach of her obligations in terms of Regulation 3.

In terms of Regulation 10 the Tribunal can award a maximum of three times the amount of the deposit. After deliberating the Tribunal decided to award a sum amounting to twice the deposit.

The Tribunal noted that the deposit had been unprotected for a period of 14 months, and that the Respondent had not returned it at the end of the tenancy as she considered that the Applicants had left the property in a state. These types of disputes are exactly why the Regulations were enacted in the first place. They provide a mechanism for a fair resolution of such disputes.

However, the Tribunal did not think that the breach was at the top end of the scale, meriting the maximum penalty. They took in to account the Respondent's position that she was not a professional landlord and that this was the first property she had rented out. She appreciated that she had acted in error.

The Applicants sought return of the deposit in a separate action.

The Tribunal considered that a penalty of 1.25 the amount of the deposit was 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.

Alison Kelly

5thFebruary2021

Legal Member/Chair

Date