



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/19/2484

Re: Property at 5 Cross Keys Close, Brechin, Angus, DD9 6EX (“the Property”)

Parties:

Miss Shona Munro, 4A Newton Terrace, Aberdeen, AB21 9LP (“the Applicant”)

Kirkgate Properties, St Ninians House, Balgavies, Forfar, DD8 2TH (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision

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

Background

This is an application dated 8th August 2019 brought in terms of Rule 103 (Application for order for payment where landlord has not paid the deposit into an approved scheme) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended. The application is made under Regulation 9 of the *Tenancy Deposit Schemes (Scotland) Regulations 2011* (“the 2011 Regulations”).

The Applicant provided with her application copies of the tenancy agreement, tenancy deposit receipt, and various e-mails

The Respondent’s solicitors wrote to the Tribunal by letter dated 14th November 2019 with an explanation of events, which indicated that the Respondent accepted that the deposit had not been lodged, and its legal responsibility for that failure. They

The Applicant confirmed that she had received repayment in full of the deposit amount of £450.00 on 23rd November 2019. She nonetheless felt that the conduct of the Respondent and its former letting agent had been unacceptable, and those failings had caused her inconvenience and upset. She was content to leave the amount of compensation awarded to the Tribunals' discretion.

Reasons for Decision

Regulation 3 of the 2011 Regulations (which came into force on 7th March 2011) provides as follows:

“(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—

- (a) pay the deposit to the scheme administrator of an approved scheme; and
- (b) provide the tenant with the information required under regulation 42.”

The Respondent as landlord was required to pay the deposit into an approved scheme. It accepts that it failed to do so, under explanation noted above that it had understood that its former letting agent had done so.

Regulation 10 of the 2011 Regulations provides as follows:

“If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal -

- (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and
- (b) may, as the First-tier Tribunal considers appropriate in the circumstances of the application, order the landlord to—
 - (i) pay the tenancy deposit to an approved scheme; or
 - (ii) provide the tenant with the information required under regulation 42.”

The Tribunal is satisfied that the Respondent did not comply with its duty under regulation 3, and accordingly it must order the Respondent to pay the Applicant an amount not exceeding three times the amount of the tenancy deposit.

In the case of *Jenson v Fappiano* 2015 G.W.D 4-89, Sheriff Welsh opined in relation to regulation 10 of the 2011 Regulations that there had to be a judicial assay of the nature of the non-compliance in the circumstances of the case and a value attached thereto which sounded in sanction, and that there should be a fair, proportionate and just sanction in the circumstances of the case. With that assessment the Tribunal respectfully agrees.

In the case of *Tenzin v Russell* 2015 Hous. L. R. 11, an Extra Division of the Inner House of the Court of Session confirmed that the amount of any award in respect of

regulation 10(a) of the 2011 Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case.

In determining what a fair, proportionate and just sanction in the circumstances of this application should be, the Tribunal took account of the facts that the Respondent's former letting agent had failed to lodge the deposit which the Applicant had paid to it, and that the Respondent was unaware of this until the Applicant sought repayment of it after the tenancy terminated. The Tribunal also took account of the fact that when the Respondent first became aware that the deposit had not been protected, that it within a relatively short space of time transferred the deposit amount to an approved scheme and immediately authorised its release to the Applicant.

Balanced against that is the fact that as a result of its former letting agent's failings, for which the Respondent accepts it is legally responsible, the Applicant's deposit was unprotected for a period of over ten months.

The 2011 Regulations have been enacted to provide protection to tenants in respect of their deposit and ensure that they can obtain repayment of their deposit at the conclusion of the lease. The period during which the deposit was not lodged in an approved scheme and during which the Applicant did not have the security provided by such lodging was lengthy (over ten months).

The Tribunal does, however, also accept that the circumstances do provide some mitigation in respect of the sum to be awarded in the exercise of its judicial discretion.

Balancing these various competing factors in an effort to determine a fair, proportionate and just sanction in the circumstances of this application, the Tribunal considers that the sum of £675.00 (one and a half times the amount of the tenancy deposit) is an appropriate sanction to impose.

Decision

For the foregoing reasons, the Tribunal orders the Respondent in respect of its breach of Regulation 3 of the 2011 Regulations to make payment to the Applicant of the sum of £675.00 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.



Legal Member/Chair

(Mr. Neil Kinnear)

29/11/19

Date