

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 16 of the Housing (Scotland)
Act 2014 and Regulations**

Chamber Ref: FTS/HPC/PR/19/2521

Re: Property at 4 Rochsoles Crescent, Airdrie, ML6 6TE (“the Property”)

Parties:

Miss Jillian Binnie, 3 Woodburn Ave, Cairnhill, Airdrie, ML6 9ED (“the Applicant”)

Mr Scott Bruce, 11 Golfhill Crescent, Airdrie, ML6 6SU (“the Respondent”)

Tribunal Members:

George Clark (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be granted without a Hearing and made an Order for Payment by the Respondent to the Applicant of the sum of Four Hundred and Sixty Pounds (£460).

Background

By application, received by the Tribunal on 13 August 2019, the Applicant sought an Order for Payment in respect of the failure of the Respondent to lodge with an approved tenancy deposit scheme a deposit of £460 she had paid to the Respondent in connection with a tenancy of the Property.

The application was accompanied by a copy of a Tenancy Agreement between the Parties, commencing on 8 June 2012, which provided for a deposit of £460.

On 26 September 2019, the Tribunal advised the Parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written representations by 17 October 2019.

In his written representations, the Respondent stated that he understood the tenancy deposit scheme to have come into effect in October 2012 and the tenancy had commenced in June 2012. He accepted that he had failed to lodge the deposit, but said that he had simply not known about the Regulations. Had he known about the scheme, he would have lodged the deposit. He accepted that ignorance was no

excuse, but asked the Tribunal to take into account his current circumstances, namely that he was unable to work due to health issues and the rent from the Property was his only source of income. He was not a “professional landlord”.

Case Management Discussion

A Case Management Discussion was held at Glasgow Tribunals Centre on the morning of 31 October 2019. The Applicant had told the Tribunal on the previous day that she was unwell and would not be attending but that she believed she had provided sufficient information for the Tribunal to make an informed decision in her absence. The Respondent was represented by his sister, Mrs Gail O'Donnell, who reiterated the Respondent accepted that he had failed to comply with the requirement to lodge the deposit, and asked the Tribunal to take his personal circumstances into account. She added that the Respondent had offered to repay the whole deposit in an attempt to bring the matter to a conclusion. The Applicant had left the Property without warning and the Respondent had been left to deal with a number of bulky items she had left behind.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required and that it would determine the application without a Hearing.

Regulation 3(1) of The Tenancy Deposit Schemes (Scotland) Regulations 2011 states that a landlord who has received a tenancy deposit must, within 30 working days of the beginning of the tenancy, pay the deposit to the scheme administrator of an approved scheme.

Regulation 10 provides that, if satisfied that a landlord did not comply with any duty in Regulation 3, the Tribunal **must** order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit.

Since 15 May 2013, all tenancy deposits must be held in a tenancy deposit scheme but the provisions are retrospective, so include deposits taken before the Regulations were introduced, as happened in the present case.

The Tribunal noted that the Respondent was not a “professional landlord” and that his failure to lodge the deposit had not been wilful, but ignorance of the law is no excuse, as the Respondent had accepted. The personal circumstances of the Respondent were not a mitigating factor and the deposit had been at risk for a considerable period of time. The Applicant had suffered no actual loss and, taking into account all the evidence before it, the Tribunal determined that a sanction of one times the deposit would be just, reasonable and proportionate in the circumstances.

Decision

The Tribunal determined that the application should be granted without a Hearing and made an Order for Payment by the Respondent to the Applicant of the sum of Four Hundred and Sixty Pounds (£460).

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.

George Clark

Legal Member/Chair

31 October 2019

Date