



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

Chamber Ref: FTS/HPC/PR/18/3065

Re: Property at 90 Lordburn Place, Forfar, Angus, DD8 2DF (“the Property”)

Parties:

Miss Jessica O’Callaghan, 97 North Street, Lochgelly, Fife, KY5 9NR (“the Applicant”)

Mr Drew Rough, Carrick Cottage, St Michaels, St Andrews, Fife, KY16 0DU (“the Respondent”)

Tribunal Members:

Susan Christie (Legal Member)

Decision

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

1. The Application for payment of a sum of money under Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”) arising out of a failure by the landlord to comply with the duty in Regulation 3 of the Regulations was received by the Tribunal on 14 November 2018.
2. A Notice of Acceptance of the Application by the Tribunal made under Rule 9 of the First-Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 as amended (“the Rules”) is dated 30 November 2018.
3. The Application type is under Chapter 11 Rule 103 of the Rules.
4. The Application had also made mention of the Applicant seeking recovery of her Deposit back and compensation.
5. On 4 January 2019, the Tribunal sent a letter to the Parties intimating the day, time and venue of the Case Management Discussion and told them they required to attend on 23 January 2019 at 10 am within Hilltown Community Centre, 15 Alexander Street, Dundee, DD37UN.

style of the one that had been signed but not an exact copy of the original

17. A Deposit was paid over of £495 at the outset. The money had been provided by Angus Council for use as the Deposit. Both Parties were aware of that. The Applicant stated that it was not a Discretionary Housing Benefit. The exact source of funding could not be stated. It was not clear therefore what obligation the Applicant had, if any to repay that to the Council.
18. The tenant continued to live there until she gave notice to leave and after a period of uncertainty as to when the end date actually would be, the tenancy ended on 25 November 2018
19. The deposit paid of £495 should have been paid into an approved scheme but it was not.
20. At the end of the tenancy when the Applicant had asked for the Deposit back the Respondent had contacted the Council as he thought the money might need to be returned to it, if the Inspection of the Property was satisfactory and there was no claim by him against it. A definitive answer was not gotten.
21. The Respondent went on to explain that neither he or his wife were familiar with the requirements in the Regulations initially. The Respondent only had this Property to rent out and it had been his family home. He had complied with all the requirements to have the Property in good (if not excellent) repair at the outset, bought Landlord Insurance and had been fair he thought with the tenants. He only became aware of the Regulations after a conversation with his daughter who had rented. That was as around June 2018. This coincided with the time when the tenant leaving was first canvassed. It had then been placed in a Scheme as time passed. The Deposit was always safe as it was in the dedicated account used for renting out the Property from the beginning. It would have been returned after a satisfactory inspection. The matter was now with the Scheme to determine but it seemed they were waiting for a decision from the Tribunal which has caused confusion.
22. The Applicant was critical of the delay on the part of the Respondent in placing the deposit into an approved Scheme.
23. Both Parties in conclusion understood the role of the Tribunal today and agreed that a Decision could be made as the relevant facts were sufficiently agreed.

Findings in Fact

- I. The parties entered into a Short Assured Tenancy which commenced on 17 June 2017 for an initial term of 6 month and continued monthly after the initial term thereafter.
- II. The tenancy ended on 25 November 2018 by agreement.
- III. It is a relevant tenancy as defined in Regulation 3 of the Regulations.
- IV. A deposit was paid of £495 by the Applicant to the Respondent.
- V. The Respondent did not pay the deposit to the scheme administrator of an approved scheme within 30 working days of the tenancy beginning.

- VI. The deposit was paid into an approved scheme on 22 October 2018.
- VII. The payment of the deposit is currently the subject of a Claim with the scheme administrator.
- VIII. The Parties are in dispute over remaining sums claimed by the Respondent to reinstate the Property to its original condition after the tenancy ended.

Findings in Fact and law

- IX. The Respondent being the landlord did not comply with Regulation 3 of the Regulations and is in breach of the Regulations.
- X. The Respondent is required to pay the tenant Applicant a sum of money and the Tribunal must make an order to that effect by Regulation 10.
- XI. The Respondent is ordered to pay the Applicant the sum of £495.

Reasons for Decision & Decision

The Application was made timeously.

A deposit was paid at the outset of the tenancy from funds provided by Angus Council and not deposited in an approved scheme. The purpose of Regulation 10 is to impose a *sanction* on the landlord for the failure and non-compliance with the statutory scheme.

There is no provision in Regulation 9 for anyone other than the tenant to make an Application to the Tribunal. This factor however caused doubt in the mind of the Respondent as to who might claim the Deposit. However, he accepted he was not aware of the Scheme until his daughter told him of it. He technically was therefore in breach of his obligations under the Regulations. Those are mandatory. Potentially the Deposit was exposed to risk for a period, albeit placed in a dedicated account. It had ultimately been placed in a Scheme and the proper procedure for making a Claim was now progressing. In the circumstances of this Application I order the Respondent to pay the Applicant £495. I could have imposed a higher sum to an amount not exceeding three times the amount of the tenancy deposit, but I considered that this figure was a reasonable and fair sanction in all of the circumstances and in the exercising my discretion.

I was not able to mediate between the Parties over the other pending claims, nor determine any claim the Council might have against the Applicant for recovery of the sum paid to her to secure the tenancy.

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.

S Christie

Legal Member/Chair

23 January 2019

Date