



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

Chamber Ref: FTS/HPC/PR/18/3283

Re: Property at 49 Longstone Grove, Edinburgh, EH14 2BT (“the Property”)

Parties:

Ms Dionne McLafferty, 49 Longstone Grove, Edinburgh, EH14 2BT (“the Applicant”)

Mr Daniel Kelly, 10 Longstone Cottages, Edinburgh, EH14 2AU (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted for payment by the Respondent to the Applicant in the sum of TWO THOUSAND ONE HUNDRED POUNDS (£2100) STERLING

- **Background**

An application was submitted by the Applicant under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). Said application sought an Order for payment under section 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”) on the basis that the landlord had failed to lodge a tenancy deposit into an approved tenancy deposit scheme.

- The Case Management Discussion

A Case Management Discussion ("CMD") took place on 28 February 2019. The parties were both personally present. The Applicant was represented by Ms Mencil of CHAI.

The Applicant moved for an order to be granted in the maximum sum of £2100, being the equivalent of three times the deposit paid. The deposit paid was £700. The landlord had failed to lodge this deposit into an approved tenancy deposit scheme in Scotland. The tenant had first occupied the property in 2015. There had been 4 tenancy agreements entered into in that period of time. After the 3rd agreement, the original deposit of £675 was repaid to the Applicant. She then decided to remain in the property under a new lease, and a new deposit of £700 was paid to the landlord. This deposit was not paid into a deposit scheme. The applicant requested that the deposit be put into a scheme upon discovering that this hadn't been done in September 2018 but this was not done. The landlord had failed to abide by his obligations under the 2011 Regulations and accordingly the Tribunal should grant the maximum sanction.

Mr Kelly admitted that he had not paid the deposit into a scheme. When asked by the Tribunal, he confirmed that he was indeed aware of his obligations to put the sum into a scheme but did not do so. No explanation was offered as to why this wasn't done. He advised the Tribunal that the parties' parents were friends and this was how the applicant came to live in the property. He advised that the applicant had not paid rent for November 2018 and the deposit had been used in lieu of that non-payment. He advised that he had served notice on the applicant to remove from the property as he has suffered a relationship breakdown and requires to move back in to the property himself to live.

- Findings in Fact

The Tribunal was satisfied that:

1. A deposit of £700 had been paid by the applicant as a tenancy deposit to the respondent
2. The £700 was not paid into an approved tenancy deposit scheme in Scotland
3. The Respondent was in breach of sections 3 and 42 of the 2011 Regulations by failing to lodge the deposit into a scheme and also by failing to provide the prescribed information to the tenant.

- Reasons for Decision

Section 3 of the 2011 Regulations states:

3.—*(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.

(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.

(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—

(a) in respect of which the landlord is a relevant person; and

(b) by virtue of which a house is occupied by an unconnected person,

unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.

(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.

Section 10 of the 2011 Regulations states:

10. *If satisfied that the landlord did not comply with any duty in regulation 3 the 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 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 2011 Regulations were put in place to afford protection to tenants that their deposits would be held securely, and to ensure that there would be an independent and fair arbitration process available for parties where any disputes at the end of a tenancy arise. The landlord's failure to lodge the deposit into a scheme has deprived the tenant of this security.

The landlord himself admitted his failure, and also admitted that he was aware of his obligations to lodge the deposit into a scheme and yet failed to do so. No reason was given as to this failure. The Tribunal considers that the failure to lodge the deposit was done wilfully and knowingly by the Respondent. There was no suggestion by the Respondent that this was an error on his part. The Tribunal also notes that the applicant requested that the deposit be put into a scheme in September 2018 and this was still not done by the landlord. Accordingly, it was held by the Tribunal that it was entirely appropriate on the basis of the information before it to make an award under section 10 of the 2011 Regulations in the maximum sum, being £2100.

- Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent payment by the Respondent to the Applicant in the sum of TWO THOUSAND ONE HUNDRED POUNDS (£2100) STERLING

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.

Fiona Watson

Legal Member/Chair

28/2/19

Date