

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 3 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/19/3296

Re: Property at Flat 3/4, Firpark Close, Glasgow, G31 2HQ ("the Property")

Parties:

Miss Ceara O'Mahony, Flat 1/1, 19 Rupert Street, Glasgow, G4 9AP ("the Applicant")

Mr Bishnu Routray, Flat 3/4, Firpark Close, Glasgow, G31 2HQ ("the Respondent")

Tribunal Members:

George Clark (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be decided without a Hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £800.

Background

By application, received by the Tribunal on 13 October 2019, the Applicant sought an Order for Payment in respect of the failure by the Respondent to lodge a tenancy deposit in an approved tenancy deposit scheme. The application was accompanied by a copy of a receipt, dated 18 January 2019, for three months' rent in advance and a deposit of £400.

The Applicant stated that she had never been provided with a written tenancy agreement, despite requesting one. She had vacated the Property on 1 August 2019, but all requests to have the deposit refunded to her had been ignored. She had since learned that the deposit had never been protected by being lodged in an approved scheme.

On 4 November 2019, the Applicant advised the Tribunal that, since the date of her application, she had received a partial refund of deposit (£322.91), but there had been no explanation as to why any part of it had been retained.

On 6 December 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 27 December. The Respondent did not make any written representations.

The Case Management Discussion scheduled for 13 January 2020 was postponed, at the Applicant's request, to 27 January 2020.

Case Management Discussion

A Case Management Discussion was held at Glasgow Tribunals Centre, 20 York Street, Glasgow, on the morning of 27 January 2020. The Applicant was present. The Respondent was not present or represented.

The Applicant told the Tribunal that her tenancy had ended because the Respondent had indicated he wished to let the Property on Airbnb. As he had not provided her with a tenancy agreement, she had no address for him, apart from the Property itself. Her communication with the Respondent had been by e-mail and text, but she had also met him on a number of occasions at the Property when he was carrying out or supervising work in anticipation of advertising the Property on Airbnb.

The Applicant confirmed that the £322.91 had been refunded to her bank account on 9 October 2019, the day after she submitted her application to the Tribunal. She asked the Tribunal to determine the application without a Hearing.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 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 to enable it to make a Decision without a Hearing.

Regulation 3(1) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") states that a landlord must within 30 working days of the beginning of the tenancy pay the deposit to the scheme administrator of an approved scheme and provide the tenant with information required by Regulation 42 of the 2011 Regulations. Under Regulation 10 of the 2011 Regulations, if satisfied that the landlord did not comply with any duty in Regulation 3, the Tribunal must order the landlord to pay to the tenant an amount not exceeding three times the amount of the tenancy deposit.

The Tribunal was satisfied that the Respondent or those instructed by him would be a regular visitor to the Property in connection with Airbnb lettings, so was content that it was appropriate to use the Property address for correspondence with him, particularly as he had not provided the Applicant with a tenancy agreement, which would have disclosed his preferred correspondence address.

Although the Applicant had not provided the Tribunal with confirmation from the three approved tenancy deposit schemes that the deposit had not been lodged with them, the Tribunal was satisfied from the evidence of the Applicant that the Respondent had refunded part of the deposit directly to her and not via an approved scheme, that the Respondent had not in fact lodged it as required by Regulation 3(1) of the 2011 Regulations. Accordingly, the Tribunal was bound to make an Order for Payment against the Respondent.

The Tribunal noted that the Respondent had not offered any explanation for his failure to lodge the deposit, which had been at risk throughout the period of the tenancy and, in part, remained at risk. The Respondent had refunded part of the deposit but had offered no explanation as to why he had retained part of it. The Tribunal regarded the Respondent's failure as serious and ongoing and decided that a fair, just and proportionate amount to order him to pay to the Applicant was two times the deposit, namely £800. The amount would have been higher but for the fact that a significant proportion had been refunded, albeit not until more than two months after the termination of the tenancy.

Decision

The Tribunal determined that the application should be decided without a Hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £800

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.

G.Clark

Legal Member/Chair

27 January 2020

Date