

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 Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Chamber Ref: FTS/HPC/PR/18/3398

Re: Property at 24 Riverside Park, Lochside, Fort William, PH33 7RB (“the Property”)

Parties:

Mr Ian McMillan, Ms Mairi Sharpe, Knockolochie Farmhouse, Pitcaple, Inverurie, AB51 5HN (“the Applicants”)

Mrs Kaye Jackson, Tigh-an-Allt, Achintee, Fort William, PH33 6TE (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) being satisfied that the Respondent as landlord of the property at 24 Riverside Park Lochside Fortwilliam PH33 7RB, did not comply with any duty in Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011, makes an order for the Respondent to pay to the Applicants the sum of seven hundred pounds (£700).

This was a case management discussion ‘CMD’ in connection with this application in terms of rule 103 of the First-tier Tribunal for Scotland (Procedure) Regulations 2017 ‘the rules’ for an order for payment where a landlord has not paid the deposit into an approved scheme in terms of Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011, “the regulations

Both parties attended the CMD via conference call. The respondent was represented by Ms Claire Bamber solicitor.

Tribunal had before it the following copy documents:-

1. Application dated 6 December 2018 and received by the Tribunal on 13 December 2018.
2. Tenancy agreement.
3. Text messages between the parties.
4. Letter from respondent to applicants dated 7 December 2018.
5. Letter from respondent's solicitors to the tribunal dated 10 April 2019.

Preliminary matters

The tribunal noted that the tenancy agreement lodged was undated and the tribunal was unable to ascertain the start date of the tenancy. The parties agreed the following at the outset of the CMD:

1. The tenancy started in December 2014.
2. A deposit of £700 was paid in December 2014.
3. The tenancy came to an end on 30 September 2018.
4. The sum of £500 was returned to the applicants.
5. The deposit was not paid into a scheme.

Case management discussion

Having resolved the preliminary matters the tribunal then went on to consider the merits of the application. It was agreed that a breach had taken place.

The respondent's position as set out in her solicitor's letter of 10 April 2019 and as further elaborated by Ms Bamber in her oral submissions, was that the respondent was an inexperienced landlord with only one property. She was unaware of her obligations regarding the scheme and the previous tenants for the property lived there before the regulations came in to effect so the lodging of the deposit was not an issue. She kept the money in a safe place and most of the deposit was returned. Her position was that the £200 deducted was not disputed by the applicants, or at least not disputed until the respondent got notice that this application was being made. She also made the point that the applicants had not given 2 months' notice of their intention to leave so if the money had been lodged it is likely that the scheme would direct that the entire deposit go back to the respondent in lieu of notice. Ms Bamber stated that her client is a registered landlord and she has now lodged the deposit for her current tenancy which was done with their assistance as she was still unsure how to go about it.

The applicants did not accept that it was agreed that £200 would be deducted from the £700 deposit. They did not accept that they had caused any damage to the property. They stated today that they agreed that the cost of two sets of keys could be deducted but this would not amount to £200.

Findings in fact

1. The tribunal is satisfied that the applicants paid a deposit of £700 to the respondents in December 2014.
2. The tribunal is satisfied that the applicants rented the property from the respondents from December 2014 until 30 September 2018. .
3. The tribunal is satisfied that the deposit was not paid in to a recognised deposit scheme and the landlord did not provide details of the scheme or a statement that he is or has applied to be entered in the register of landlords maintained by the local authority, as required by Regulation 42 of the regulations.

Reasons

The tribunal was satisfied that a breach of Regulation 3 has occurred and that an order is appropriate in terms of Regulation 10. The tribunal considered the terms of the regulations. Regulation 3 provides:-

A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 days of the beginning of the tenancy, pay the deposit to the scheme administrator of an approved scheme. And provide the tenant with the information required under regulation 42.

The tribunal reviewed all of the recent cases regarding tenancy deposit schemes and noted that in the case of Kirk-v-Singh sheriff Jamieson states

The defender, a registered landlord, acted through his agent. Although that ignorance is no excuse, it is a factor to be taken into account in the exercise of my discretion.

Sheriff Jamieson in Singh was mindful of the need to:-

proceed to impose a sanction which is "fair , proportionate and just having regard to the seriousness of the noncompliance.

The tribunal, having heard all of the available evidence and taking into account the representations made for the respondent is satisfied that the respondent failed to comply with all of her obligations in terms of Regulation 3.

The tribunal noted in mitigation that the respondent is not an experienced landlord. She returned most of the deposit. From the terms of her letter of 7 December 2018 there is clearly an ongoing dispute with the applicants regarding alleged damage to the property. This is however entirely the sort of situation that the regulations are designed to address. The respondent, in spite of her inexperience seemed to be aware of the 2 month notice period in the lease. She also negotiated the return of some of the deposit from a position of strength and the deposit was unprotected for almost 4 years.

Taking all of that into account the tribunal decided that a sanction of £700 representing one times the deposit is fair just and reasonable in all of the circumstances.

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.

17 April 2019.

Lesley A Ward Legal Member

Date