

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 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Chamber Ref: FTS/HPC/PR/18/1793

Re: Property at 20 Maccallum Place, Kilmarnock, KA3 7HT (“the Property”)

Parties:

Mr James O'Hara, 137 Craufurdland Road, Kilmarnock, KA3 2HX (“the Applicant”)

Mrs Joanne Miller, 30 Glasgow Road, Kilmarnock, KA3 1TL (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member)

Decision (in absence of the Applicant)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent as landlord of the property at 20 Maccallum Place Kilmarnock KA3 7HT did not comply with any duty in Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 and makes an order for the Respondent to pay to the Applicant the sum of one hundred and eighty three pounds (£183).

This was a case management discussion in connection with an application made in terms of Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Rules 2017, ‘the rules’ and Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011, ‘the regulations’. The application was made by Mr James O’Hara on 16 July 2018.

The tribunal had before it the following copy documents:

1. Application dated 14 July 2018 and received by the Tribunal on 16 July 2018.
2. Tenancy agreement dated 7 September 2015.

Lesley Ward

3. Bank statement of Applicant from January 2017 until May 2018.
4. Emails from respondent dated 6 and 12 September 2018.
5. Productions by Respondent including note by Applicant dated 5 May 2018.
6. Execution of service of the application on Respondent by sheriff officer dated 3 September 2018.
7. Email from Applicant dated 4 September 2018.

The Respondent attended the case management discussion and was accompanied by her husband Michael Miller as her supporter. The tribunal had sight of an email from the Applicant dated 4 September 2018 which read:

I will be unable to attend on 17 September due to work commitments. I would be grateful if a decision can still be made as I have provided sufficient information. Many thank James O'Hara.

The tribunal proceeded with the case management discussion in the absence of the Applicant. The Applicant has not made any response to the productions lodged by the Respondent.

The Respondent's position is that she did fail to place the money on a deposit within 30 working days of the start of the tenancy. She confirmed that the tenant moved out at the end of May 2018 and the agreement came to an end at that time. The deposit was lodged with Deposit Scotland around 28 March 2018. Her evidence was that it simply slipped her mind to lodge the money. She has 5 properties and it was only when she checked with Deposit Scotland regarding an another property that she owns that she realised the deposit was not lodged for the property at 20 Maccallum Place. She then lodged the deposit. This was before the Applicant gave her notice via his note of 5 May 2018 that he was moving out. A small deduction was made from the deposit for cleaning the cooker which the applicant agreed to. The Respondent's evidence was that she previously used an agent but is now attending to the properties herself and this deposit was forgotten during a busy time. She did not notify the tenant when the money was eventually lodged and she is a registered landlord but did not provide the Applicant with her landlord registration number.

Findings in fact

1. The tribunal is satisfied that the property at 20 Maccallum place Kilmarnock KA3 7HT was let by the Respondent and her husband to the Applicant on 7 September 2018.
2. The tribunal is satisfied that a deposit of £550 was paid by the Applicant to the Respondent.
3. The tribunal is satisfied that the tenancy agreement came to an end around 30 May 2018.
4. The tribunal is satisfied that the Applicant has made a timeous application to the Tribunal in terms of rule 103 and regulation 9.

Lesley Ward

5. The tribunal is satisfied that the deposit was not paid into an approved scheme until around March 2018.
6. The tribunal is satisfied that the Respondent did not inform the Applicant that the money was paid into the scheme or of her landlord registration details.
7. The tribunal is satisfied that the Respondent has failed to comply with the duties in terms of regulation 3 and 42.
8. The tribunal is satisfied that the deposit has now been returned to the Applicant.

Reasons

The tribunal heard oral evidence from the Respondent and considered the terms of the written evidence. The tribunal considered the terms of rule 29 and was satisfied that there was sufficient information to make a decision today in the absence of the Applicant and that the procedure had been fair.

The tribunal considered the terms of the regulations and in particular regulation 3 and 42. The Respondent through an oversight, failed to lodge the Applicant's deposit in a recognised scheme for around 3 years. She was prompted to do so by her involvement as landlord for another property. The Applicant got back his deposit and the parties agreed that a small deduction should be made. The Applicant's note of 5 May 2018 states " thanks for being great landlords". The Respondent did not fulfil the other aspects of regulation 42 such as notifying the tenant that the deposit was being lodged and giving her landlord registration details. The Respondent admitted the breach and the tribunal considers that there has been a breach of regulation 3.

Turning to the sanction, the tribunal considered the recent cases and in particular the recent case law. The tribunal considered the case of Kirk-v-Singh 2015 SLT (Shct) 111 in which sheriff Jamieson reviewed the recent cases and was mindful of the need to

Proceed to impose a sanction which is fair proportionate and just and having regard to the seriousness of the non compliance".

The tribunal today is satisfied that there are mitigating factors and that this is a breach at the lower end of the scale. The breach appears to have been an oversight which was rectified. The Applicant has not suffered any prejudice as his deposit was returned by Deposit Scotland. The Applicant appears to have had a good relationship with the Respondent during the tenancy and described the Respondent and her husband as "great landlords". In all of the circumstances the tribunal decided that the sum of one hundred and eighty three pounds which is around one third of the deposit is fair, proportionate and just in all of the circumstances.

Lesley Ward

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.

Lesley Ward

Lesley A Ward Legal Member/

17 September 2018

4