

Housing and Property Chamber
First-tier Tribunal for Scotland



Statement of Decision 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/18/0980

Re: Property at 48 Muir Street, Carluke, ML8 5JJ (“the Property”)

Parties:

Miss Angela Rae, 11 Greenbank Terrace, Carluke, ML8 4DH (“the Applicant”)

Carson Brown Properties Ltd, Albamill Newmains Ltd, Unit 4, Biggar Road Industrial Estate, Biggar Road, ML1 5PB (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to an Order for payment in the sum of £400.

Background

The Applicant submitted an application on 15th April 2018 seeking an order for payment in terms of Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011. The Tribunal intimated the application to the Respondent by sheriff officer on 25th June, along with a cover letter dated 21st June 2018 advising that a case management discussion had been assigned for 25th July 2018. At the Applicant’s request, the case management discussion was postponed and a new case management discussion assigned for today. By letter of 18th September 2018, the Respondent was advised of the date, time and place of today’s case management discussion. The Respondent was also told that it required to attend the case management discussion and was informed that the Tribunal could make a decision today on the application if the Tribunal has sufficient information and considers the procedure to have been fair. The Respondent lodged a written response to the Application.

The Case Management Discussion

The Applicant was present and accompanied by her sister in law, Miss Hendry. The Respondent was represented by Ms Yvonne Millar and Mr James Nisbet.

One preliminary matter was dealt with, namely, the correct designation of the Respondent. The Applicant advised that she did not have her tenancy agreement. She believed that the correct designation of the Respondent was Carson Brown Properties Limited. Ms Millar confirmed that that company was the landlord. On the motion of the Applicant, without objection from the Respondent, the application was amended to reflect that it is directed against Carson Brown Properties Limited.

The Tribunal noted that the Respondent has a complaint about the condition of the property when the Applicant vacated it. The Tribunal advised parties that the issue to be determined today was a narrow one, namely, did the Applicant pay a deposit and if so, did the Respondent comply with the 2011 Regulations?

The Applicant advised that the tenancy commenced on 18th January 2015 and ended on 12th March 2018. She advised that she paid a deposit of £400 on 18th January 2015 and that that deposit was not paid over by the Respondent to one of the approved schemes. The Applicant sought an order for payment in the sum of £400, which represents the sum paid by her by way of a deposit.

Ms Millar on behalf of the Respondent accepted that a deposit of £400 was paid on 18th January 2015 and was not paid into an approved scheme. It was accepted that the prescribed information was not provided to the Applicant. The explanation given was that the Respondent anticipated that the Applicant would purchase the property in the fullness of time, and the tenancy was agreed because the Applicant's late father asked the Respondent to grant a tenancy to the Applicant. It was further stated by Ms Millar that rent was unpaid for the period 1st to 12th March 2018 and the condition of the property at termination of the tenancy was said to have been poor. The written response lodged on behalf of the Respondent sets out further detail about the condition of the property.

Findings in Fact:

1. The Applicant and the Respondent entered into a Tenancy Agreement in respect of the property.
2. The tenancy operated from 18th January 2015 to 12th March 2018.
3. The deposit paid by the Applicant in terms of that tenancy was £400 which was paid on 18th January 2015.
4. The Respondent failed to comply with its duty in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations in respect that the deposit paid by the Applicant was not paid to an administrator of an approved scheme within 30 days as required and separately, the Respondent failed to provide

the Applicant with the Prescribed information about her tenancy deposit in accordance with Regulation 42 within 30 days.

Reason for Decision

The Tribunal proceeded on the basis of the written documents which were before it and the information provided by the parties at the case management discussion. There was no Deposit Protection Certificate issued to the Applicant. The fact that the deposit was not lodged within 30 days of receipt resulted in the Applicant's deposit being unprotected for the entirety of the tenancy. The Applicant had no opportunity to use the alternative dispute resolution process at the end of the tenancy.

The terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 are mandatory and state "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."

The Tribunal was satisfied that the Respondent failed to comply with its duties in terms of that regulation. It was the Respondent's duty to pay the deposit to the scheme administrator within 30 days of receipt and it failed to do that. The Tribunal considered that an appropriate sanction for failure to comply with the duties was to order the Respondent to pay the Applicant £400.

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Nicola Irvine

Legal member/chair

9th October 2018

Date

