

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/18/1129

Re: Property at 3/3, 3 Kenley Road, Renfrew, Renfrewshire, PA4 8FR (“the Property”)

Parties:

Mrs Lydia Sommerville, 11 Robertson Close, Renfrew, PA4 8NQ (“the Applicant”)

Mr Robert Potts, 14 Alden Close, Standish, Wigan, WN1 2TS, (“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 £1,350.

Background

The Applicant submitted an application on 8th May 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 process server on 20th September 2018 along with a covering letter dated 18th September 2018. The Respondent was advised of the date, time and place of today’s case management discussion. In that letter, the Respondent was advised that any written representations he wished to make should be sent to the Tribunal by 4th October 2018. The Respondent was also told that he 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 Tribunal also intimated the application to the

Respondent's agent, MS Property Management, on 18th September 2018. No written representations were received from the Respondent or his agent.

The Case Management Discussion

The Applicant was present. The Respondent was not present, nor represented and the case management discussion proceeded in his absence.

The Applicant advised the Tribunal that her position is as follows: she paid a deposit of £675 before taking occupancy of the tenancy on February 2017. In March 2018 she received intimation of a penalty notice because the Respondent was not a registered landlord. She was told by the local authority not to pay rent unless and until the Respondent registered as a landlord. She discussed matters with the Respondent's agent, M S Property Management in April 2018 and advised them that she had made enquiries and had discovered that her deposit had not been lodged with one of the approved providers. After raising the issue, she received the prescribed information, a copy of which is lodged, but she did not receive a certificate. The Respondent subsequently registered as a landlord. The tenancy terminated on 11th May 2018 and the parties agreed that the deposit would be released to the Respondent as payment of the last month's rent.

Findings in Fact:

1. The Applicant and the Respondent entered into a Tenancy Agreement dated 3rd and 6th February 2017. The term of the tenancy was to be from 28th February 2017 to 29th August 2017.
2. The deposit paid by the Applicant in terms of that tenancy was £675 in February 2017.
3. The tenancy continued by tacit relocation and thereafter terminated on 11th May 2018.
4. The Respondent failed to comply with his 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 almost the entirety 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 his 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 he failed to do that. The deposit was only paid into an approved scheme on 10th April 2018. The Tribunal considered that an appropriate sanction for failure to comply with the duties was to order the Respondent to pay the Applicant £1,350 which represents 2 times the amount of the deposit.

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