

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/18/1329

Re: Property at 26 Abernethy Road, Dundee, DD5 2PF (“the Property”)

Parties:

Mr Jordon Hales, 285 Strathmartine Road, Dundee, DD3 8NS (“the Applicant”)

Mrs Sharon Taylor, East Denside Fram, Dundee, DD5 3DE (“the Respondent”)

Tribunal Members:

Ewan Miller (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that The Respondent had failed in his duty to pay the deposit paid by the Applicant to the scheme administrator of an approved scheme under Regulation 3(1)(a) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”); and

Orders the Respondent to pay to the Applicant the sum of £1000 in terms of Regulation 10(a).

Background:

1. By application dated 29 May 2018 under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 and Regulation 9 of the Regulations the Applicant sought an order for payment under Regulation 10.
2. A Case Management Discussion took place at Kirkton Community Centre, Derwent Avenue, Dundee, DD3 0AX on 22 August 2018. The Applicant was

present and was represented by his brother Dr Gavin Hales. The Respondent was also present and accompanied by her husband Mr Michael Taylor.

Findings in Fact:

3. The parties entered into a Private Rented Tenancy by way of a Lease dated 10 December 2017. The lease commenced on 15 December 2017 and was terminated by the Applicant giving Notice of Termination after approximately two months.
4. A deposit of £450 was paid prior to the commencement of the tenancy. At the end of the tenancy £400 was repaid by the Respondent to the Applicant. The Respondent accepted that the deposit had not been put in to any of the approved schemes available under the Regulations at any point during the period of the lease.

Representations:

5. The Applicant and his representative indicated that they had little to add to their written submissions. Whilst the relationship with the Respondent had been amicable notwithstanding the termination of the tenancy, the relationship had begun to break down shortly after that. The Parties had disagreed about the condition of the Property upon its return. The Applicant was of the view that the Property had been returned in good condition and sought the return of the deposit.
6. The Applicant had asked the Respondent for evidence that the deposit was held on an approved scheme in terms of the Regulations. The Respondent's husband twice replied to the Applicant stating that the deposit money had been returned to them by the deposit company. The Respondent had returned £400 of the deposit (after initially offering to repay a smaller proportion of the deposit) but had still never provided proof that the deposit had been placed in an approved scheme.
7. The Respondent and her husband indicated at the hearing that, as they had set out in their written representations, they accepted that they had not put the deposit in to an approved scheme. The Respondent highlighted that they were amateur landlords and had relied on help from a friend to complete the forms. The Respondent had been going through a difficult time with parents in England at the time the lease started and she had often been absent. She accepted that she had not paid sufficient attention to the relevant rules and regulations around letting a property out.
8. The Respondent and her husband indicated that they were unhappy with the condition of the Property when it was returned to them. Whilst they accepted they were at fault they had not acted wilfully in failing to put the deposit in to an approved scheme. They felt they had acted reasonably in returning the bulk of the deposit to the Applicant.

Reasons for Decision:

9. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 states that the Tribunal may do anything at a Case Management Discussion which it may do at a hearing, including making a decision. The tribunal decided, on the basis of the information presented to it, to determine the application at the Case Management Discussion.
10. Regulation 10 of the Regulations provides that if the Tribunal is satisfied that the landlord did not comply with the duty in Regulation 3 to place the deposit in a scheme within the time limits specified, which was admitted, the Tribunal must order the landlord to pay to the tenant an amount not exceeding 3 times the amount of the deposit. Accordingly the only question for the Tribunal is to determine the amount of the sanction.
11. In this case it was accepted that the deposit had not been paid in to an approved scheme within the required timescale. The Tribunal noted that the lease did make reference to the deposit being placed in a specific tenancy scheme so the Respondent ought to have been aware of the obligations incumbent upon her. Of particular concern to the Tribunal was that upon being asked about the whereabouts of the deposit the Respondent and her husband did not reveal the true position to the Applicant. Rather they misled the Applicant in writing on two separate occasions and indicated that they had spoken to the deposit scheme provider and stated that the account had been closed and the money returned to them. The Tribunal viewed this as a wilful and deliberate act designed to mislead the Applicant as to the true position. Had there been no other extenuating circumstances the Tribunal would have ordered the maximum sanction of three times the deposit to be paid.
12. Whilst ignorance of the law is no excuse, the Tribunal did note that this was the only property the Respondent let. The Tribunal accepted that they had relied on advice from a friend who was a landlord. The Tribunal also accepted that the Respondent had some difficult personal circumstances. The Respondent accepted at the hearing that she and her husband had done the wrong thing in pretending to have received the deposit back from an approved scheme. The Respondent was contrite. The Tribunal accepted that the Respondent was an amateur landlord who was learning the hard way of the rules and regulations which a landlord requires to be familiar with before letting private rented property.
13. The range of sanction open to the Tribunal is up to a maximum of three times the amount of the deposit of £450 being a total of £1350. The Tribunal considers that in the light of the representations made (and, in particular, the misleading of the Applicant by the Respondent as to the whereabouts of the deposit), the level should be at the upper end of the scale. However, the Tribunal took account of the fact that the bulk of the deposit had been repaid, that the Respondent was an amateur landlord who had relied on a third party to assist her and that the Respondent was also experiencing some difficult personal circumstances at the time. Taking in to account these factors, the Tribunal exercised its discretion and considered that it would be fair, proportionate and just to sanction the Respondent for noncompliance by awarding the Applicant the sum of £1000.

Decision:

14. The Respondent will pay to the Applicant the sum of £1000 by way of sanction under Regulation 10(a).

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.

Ewan Miller

Legal Member/Chair

Date

22/8/18