



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Regulations 3 & 10 of the Tenancy
Deposit Schemes (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/18/2246

Re: Property at Flat 3/1, 208 Allison Street, Glasgow, G42 8RS (“the Property”)

Parties:

Mr John Farrell, 77B Titwood Road, Glasgow, G41 2DG (“the Applicant”)

Mr Lawrence Reilly, 177 Titwood Road, Glasgow, G41 4BL (“the Respondent”)

Tribunal Members:

Susan Christie (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. The application for payment of a sum of money under Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”) arising out of a failure by the landlord to comply with the duty in Regulation 3 of the Regulations was received on 28 August 2018.
2. A Notice of Acceptance of the Application by the Tribunal is dated 10 September 2018.
3. The Application is made under Rule 103 of the First tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017, as amended (“the Rules”).
4. On 5 October 2018 a letter from the Tribunal addressed to the Respondent dated 4 October 2018 along with the accompanying documents and Guidance Notes was served on the Respondent by Sheriff Officer Letterbox service.
5. The Case Management Discussion to be held on 24 October 2018 at 10am in the Glasgow Tribunals Centre, Room 1110, 20 York Street, Glasgow, G2 8GT. Both parties being advised of same by letters of 4 October 2018 and also that a decision could be made that day if the procedure was fair.

6. Written representations by the Respondent were to be submitted by 17 October 2018. None were made.

The Hearing/Case Management Discussion

7. The Applicant was in attendance only. I was satisfied that proper intimation had been made on the Respondent that allowed me to proceed in his absence.
8. The application details and the documents produced were discussed in detail around the lease terms, the deposit paid and the terms of the application.
9. The Lease commenced on 13 March 2016 and was on a monthly recurring basis until terminated.
10. The rent was £550 p.c.m. and a security deposit was taken and recorded in the Lease in the sum of £550.
11. The security deposit had been paid by the joint tenant Hannah Grace Ryan at the start of the lease on behalf of them both. She had moved out around 15 August 2017 and the Lease document was amended to remove her name on 7 September and initialled by the Landlord. Another occupant then moved in, Chris Slade but the Lease was never changed to include his name.
12. A Rent Penalty Notice was served on the tenants on 6 December 2017.
13. The remaining tenant, the Applicant, sent a document called a Notice of Termination by email on 1 May 2018 intimating he was removing from the Property on 29 May 2018. The Recorded Delivery copy sent appears never to have been called for as at 22 May 2018. The Notice is therefore flawed. Notwithstanding, the Applicant returned the keys to the Property to the Respondent with a cover letter dated 19 June 2018.
14. The matter of the deposit, where it was lodged for security purposes and the possibility of this application to the Tribunal, was intimated on the Respondent on 26 March 2018 by the Applicant.
15. Prior to that the Applicant on the advice of Shelter Scotland, had made enquiries with Letting Protections Scotland, Safe Deposit Scotland and My Deposits Scotland to ascertain if they held the Deposit. This was on 20 February 2018. None of them were able to confirm that they held or were currently protecting the deposit for the Property.
16. The Applicant stated that the Respondent had ceased communicating with him around February 2018.
17. The sum being sought was in the Applicant's view at the higher end of the scale given the financial risk to him and the insecurity he felt given all of the circumstances he found himself in.

Findings in Fact

- I. The Parties entered into an Assured Tenancy. It is a relevant tenancy as defined in Regulation 3 of the Regulations.
- II. A deposit was required and paid in terms of the lease in the sum of £550.
- III. The Respondent did not pay the deposit into an approved Scheme within 30 working days of the tenancy beginning, nor did he subsequently.

- IV. The Applicant quit the Property and returned the keys to the Respondent around 19 June 2018.
- V. No deposit has been repaid to the Applicant.

Findings in Fact and law

- VI. The Respondent being the landlord did not comply with Regulation 3 of the Regulations and is in breach of the Regulations.
- VII. The Respondent is required to pay the Applicant a sum of money and the Tribunal must make an Order to that effect by Regulation 10.
- VIII. The Respondent is ordered to pay the Applicant the sum of £1650.

Reasons for Decision and Decision

The Application is well founded. The purpose of Regulation 10 is to impose a sanction on the landlord for the failure and non-compliance with the statutory scheme and Regulations. A deposit was paid at the outset as evidenced in the lease and was never paid into an approved scheme. The tenant has never recovered the deposit. His deposit has been exposed to risk since and throughout the tenancy. No mitigation or explanation has been advanced by the Respondent. I consider the maximum amount allowed under the Regulations should be imposed having regard to all of the circumstances and I make that Order.

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.

Susan Christie

Legal Member/Chair

24 October 2018
Date