



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy
Deposit Schemes (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/18/2287

Re: Property at 19 Castle Heather Road, Inverness, IV2 4EA (“the Property”)

Parties:

Ms Sandra Matos, 6 Enrick Crescent, Drumnadrochit, IV63 6TP (“the Applicant”)

Mr Troy Donoghue, 12 Seaforth Gardens, Dingwall, IV15 9NN (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the Respondent to the Applicant in the sum of £1000.00.

Background

1. By application dated 27 August 2018 the Applicant applied to the Tribunal for an order under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 on the grounds that the Respondent had not paid her deposit into an approved tenancy deposit scheme in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”).
2. The Applicant provided the Tribunal with copies of her lease, Notice to Quit, bank statement and correspondence between the parties in support of her application.

3. By Notice of Acceptance dated 3 October 2018 a legal member with delegated powers accepted the application and a Case Management Discussion was assigned.
4. Intimation of the Case Management Discussion was given to the Applicant by post on 13 November 2018 and to the Respondent by Sheriff Officers on 13 November 2018.
5. The Respondent submitted written submissions to the Tribunal by email dated 29 November 2018. The applicant did not lodge any further submissions.

Case Management Discussion

6. A Case Management Discussion was held at the Spectrum Centre, 1 Margaret Street, Inverness on 5 December 2018. It was attended by both parties. The Applicant was supported by her partner Mr Valder Fernandez.
7. The parties agreed that the tenancy commenced on 1 September 2012 and ended on 31 May 2018. The deposit of £500.00 had been paid by the Applicant to the Respondent and retained by him in his bank account throughout the duration of the tenancy. The Respondent accepted he was in breach of Regulation 3 of the 2011 Regulations.
8. The Applicant confirmed that she had applied to the Tribunal on 27 August 2018 and the Respondent accepted that the application had been made timeously in terms of Regulation 9 of the 2011 Regulations.
9. The Respondent explained that he had commenced renting the property in 2009 and the Applicant had been his third tenant. He had complied with all other regulations but had been unaware of the existence of the Tenant Deposit scheme until he had received the case papers from the Tribunal.
10. The applicant confirmed he had been registered as a landlord in 2009 but had never attended any of the landlord forums organised by Highland Council as they were all in Lochaber and he worked full time. He did not know if Highland Council had anything on their website about tenant's deposits. Since receiving the case papers he had looked at the Shelter and Scottish Government websites and was aware of the consequences of failing to lodge a tenant's deposit in an approved scheme.
11. The Applicant said that she had always thought that the Respondent had been a fair Landlord but had been distressed by the way she had been given notice when it had been said the Respondent had wanted to come back to live in the property when in fact it was to be sold. She thought that the Notice to Quit had been defective but she had still moved out of the property. She was upset because as a result of the Respondent not putting the deposit in a scheme he was able to deduct £220.00 for replacement linoleum without her agreement.

12. The Respondent wished the Tribunal to award her the maximum amount of three times the deposit.
13. The Respondent confirmed he had sold the property. He had no other rented properties and no intention of being a landlord again.
14. Both parties wished the Tribunal to make a determination in the matter without continuing to a further hearing.

Findings in Fact

15. The parties entered into a short assured tenancy agreement that commenced on 1 September 2012 and continued for six months and then by tacit relocation for further six month periods until it ended by agreement on 31 May 2018.
16. The applicant paid a deposit of £500.00 to the Respondent at the commencement of the tenancy.
17. The respondent failed to lodge the deposit in an approved tenancy deposit scheme in breach of Regulation 3 of the 2011 Regulations.
18. The Applicant made a timeous application to the Tribunal in terms of Regulation 9 of the 2011 Regulations.
19. The Applicant's deposit was unprotected for a period of 5 years and 9 months.
20. The Respondent retained the Applicant's deposit in his bank account and deducted £220.00 from it at the end of the tenancy and returned the balance to the Applicant.
21. Although the Respondent was a registered landlord since 2009 he did not keep up to date with changes to legislation affecting landlords and was unaware of the introduction of the Tenancy Deposit Scheme in 2012.

Reasons for Decision

22. As there was agreement between the parties that the Respondent had breached Regulation 3 of the 2011 Regulations and the Applicant's application to the Tribunal was timeous in terms of Regulation 9 the parties wished the Tribunal to make a determination on the amount to be awarded to the Applicant based on the written submissions and the submissions at the Case Management discussion.
23. The legal member was of the view that whilst he had unfettered discretion in the amount awarded the major factors to be taken into account in arriving at a fair, just and proportionate sanction should be the length of time the Applicant's deposit was unprotected and the Respondent's experience as a

Landlord. The Applicant's deposit was unprotected for almost six years and that would justify an award at the highest end of the scale. However the Respondent was not a professional landlord and only had the one property that he rented out. Although he should have taken more care to familiarise himself with changes to the law affecting landlord and tenant it did not appear that there had been any intentional or wilful disregard of the regulations. The respondent had been simply unaware of them. Although the Applicant had not received all of her deposit back and had been deprived of the opportunity of disputing the retention of part of the deposit through a deposit scheme balancing all the competing factors the Tribunal was of the view that a fair, proportionate and just sanction in the circumstances of the application would be an award of £1000.00 being two times the amount of the deposit.

Decision

24. For the foregoing reasons the Tribunal orders the Respondent in respect of his breach of Regulation 3 of the 2011 Regulations to make payment to the Applicant of the sum of £1000.00 in terms of Regulation 10(a) of the 2011 Regulations.

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.

Graham Harding

Legal Member/Chair

5/1 December 2018

Date