



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

Chamber Ref: FTS/HPC/PR/22/3226

Re: Property at 21 New Shawbost, Isle Of Lewis, HS2 9BG (“the Property”)

Parties:

Miss Catherine Harwood, 7 Doune Park, Bragar, Isle Of Lewis, HS2 9DE (“the Applicant”)

Miss Susan Harfield, 139 Fair Oak Road, Eastleigh, SO50 6LW (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £550 should be made in favour of the Applicant.

Background

1. By application dated 6 September 2022, the Applicant seeks an order in terms of Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and Regulations 9 and 10 of the 2011 Regulations. The Applicant lodged copies of emails from all three approved tenancy deposit schemes which confirm that they had no record of a deposit relating to the Applicant’s tenancy of the property. Copy text and WhatsApp messages relating to the lease of the property, payment of the deposit and the end of the tenancy were also submitted.
2. A copy of the application and supporting documents were served on the Respondent. Both parties were advised that a case management discussion (“CMD”) would take place by telephone conference call on 22 November 2022 and that they were required to participate. Prior to the CMD the Respondent

sent an email to the Tribunal stating that she would like to settle the matter by paying the “outstanding balance” to the Applicant.

3. The CMD took place on 22 November 2022 at 2pm. The Applicant participated and was represented by Ms Lisowska. The Respondent did not participate.

The CMD

4. From the application form, the documents lodged in support of the application and the information provided at the CMD by the Applicant, the Legal Member noted the following:

- (i) The tenancy started on 14 April 2022 and terminated on 11 August 2022.
- (ii) The Applicant paid a deposit of £300 prior to the start of the tenancy. A cheque was initially sent to the Respondent. However, it was not honoured by the bank and a bank transfer was arranged.
- (iii) The parties did not sign a tenancy agreement as the Respondent did not think this was necessary
- (iv) The deposit of £300 was not lodged in an approved tenancy deposit scheme.
- (v) The deposit was repaid in full to the Applicant on or about 2 August 2022. Although the tenancy had not yet ended, the Applicant had moved out and removed all her belongings by 30 July 2022.

5. In response to questions from the Legal Member, the Applicant and her representative stated that the parties had agreed that the tenancy would be for a period of 2 years at a monthly rent of £300. There was no discussion about what would happen to the deposit or whether it would be lodged in a scheme. Ms Harwood said that she moved to Scotland shortly before the start of the tenancy and was not aware of the regulations which affected private residential tenancies. Her mum made some enquires via Facebook about a property to rent and received a reply from the Respondent. The parties did not meet. The Respondent resides in England and all communication was by message. When the Applicant made enquires about the property, such as the location of the electric box, the Respondent said she didn't know as she had never been inside the property. She told the Applicant that the property had been occupied by tenants before.

6. The Legal Member was told that the Respondent was not registered with the Scottish Register of private landlords. When the Applicant contacted her about leaks from the roof, the Respondent asked the Applicant to arrange for a contractor. In June 2022, a property manager came to inspect, at the request of the Respondent. The Applicant was told that he was there to see what work

was needed. Following his visit, the Applicant was told that the Respondent had decided to sell the property. She moved out of the property in July 2022, after a visit by an Environmental Health Officer, who said that the property was not habitable.

7. The Applicant stated that she is seeking an award of three times the deposit. She said that the situation had caused her and her son, stress, and anxiety. They became homeless and had to move in with family. The Applicant had anticipated staying in the property for a couple of years. There were financial implications due to having to move out after a few months. Some of her belongings were damaged because of the condition of the property.

Findings in Fact

8. The Applicant is the former tenant of the property.
9. The tenancy started on 14 April 2022.
10. The Respondent is the former landlord of the property.
11. The Applicant paid a deposit of £300 prior to the start of the tenancy.
12. The tenancy terminated on 11 August 2022.
13. The deposit paid by the Applicant was not lodged by the Respondent in an approved tenancy deposit scheme.
14. The deposit paid by the Applicant was repaid to her at the end of the tenancy.

Reasons for Decision

15. Regulation 3 of the 2011 Regulations states –
 - (1) 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.
 - (1A) Paragraph (1) does not apply –
 - (a) Where the tenancy comes to an end by virtue of section 48 or 50 of the Private Housing (Tenancies) (Scotland) Act 2016, and
 - (b) The full amount of the tenancy deposit received by the landlord is returned to the tenant by the landlord,
Within 30 working days of the beginning of the tenancy.

16. The Legal Member is satisfied that the Applicant's tenancy is a relevant tenancy in terms of the 2011 Regulations and that a deposit of £300 was paid and not lodged in an approved deposit scheme within 30 days of the start of the tenancy. The Tribunal notes that the application was lodged with the Tribunal on 6 September 2022. The Applicant has therefore complied with Regulation (9)(2) of the 2011 Regulations, which requires an application to be submitted no later than 3 months after the tenancy had ended.
17. Regulation 10 of the 2011 Regulations stipulates that if the Tribunal is satisfied that the landlord did not comply with a duty in terms of regulation 3, it "**(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit.**" The Tribunal therefore determines that an order must be made in favour of the Applicant.
18. The Applicant seeks an award of three times the deposit, the maximum which can be awarded.
19. The Legal Member notes that the deposit was not secured in an approved tenancy deposit scheme throughout the tenancy. However, the tenancy only lasted four months and the whole deposit was returned to the Applicant prior to the end of the tenancy. From the information provided at the CMD, it appears that the Respondent had a somewhat casual attitude to her obligations as landlord. She had not been inside the property since it was purchased and does not appear to have arranged to have it inspected and checked prior to the start of the tenancy, to ensure that it met the repairing standard. She did not provide the Applicant with a written tenancy agreement. Furthermore, although she had rented the property on at least one previous occasion, and had some experience of being a landlord, she had not registered with the Local Authority, although this is a legal requirement.
20. The Legal Member is not persuaded that the failure to lodge the deposit in an approved scheme led to the stress, anxiety and financial consequences referred to by the Applicant. These appear to be the result of the poor condition of the property and the fact that the Applicant had to move out and find somewhere else to stay only a few months after moving in. Furthermore, it appears that the Applicant was wholly unaware of the 2011 Regulations until she took advice on her situation, after the tenancy ended.
21. The Respondent did not participate in the CMD and only lodged a brief submission. This indicated that she wanted to pay an "outstanding balance", by instalments. It is not clear what she meant by this.
22. In the case of *Rollett v Mackie* (2019 UT 45), the Upper Tribunal refused an appeal by the Applicant who argued that the maximum penalty ought to have been imposed. Sheriff Ross commented that the "level of penalty requires to reflect the level of culpability" and that "the finding that the breach was not intentional...tends to lessen culpability" (13). He goes on to say, "Cases at the most serious end of the scale might involve repeated breaches against a

number of tenants, fraudulent intention, deliberate or reckless failure to observe responsibilities, denial of fault, very high financial sums involved, actual losses caused to the tenant.”

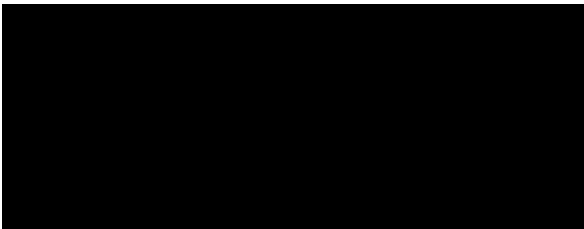
23. In the present case, none of the aggravating factors highlighted by Sheriff Ross appear to be present. Furthermore, the Applicant suffered no direct financial loss. However, the deposit was not secured throughout the tenancy and the Respondent appears to have had some previous experience of renting property and ought to have been aware of her obligations. The Legal Member is satisfied that an award of £550 should be made.

Decision

24. The Tribunal determines that an order for payment of the sum of £550 should be made in favour of the Applicant.

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.



22 November 2022