



Decision with Statement of Reasons 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/22/0066

Re: Property at 2 Broomhills Cottage, Fraserburgh, AB43 7EX ("the Property")

Parties:

Miss Natasha Barker, 61 Yardie, Buckie, AB56 1XJ ("the Applicant")

Mr Harry Milne, Broomhills Lodge, Fraserburgh, AB43 7EH ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member)

Decision

At the Case Management Discussion ("CMD") on 29 March 2022 which took place by telephone conference the Applicant was in attendance. The Respondent was not in attendance but was represented by Mr Graeme Walker of Brown & McRae, Solicitors, Fraserburgh.

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

Background

Prior to the CMD the Tribunal received from Mr Walker on behalf of the Respondent written Submissions in response to the application under cover of an email dated 24 February 2022.

Prior to the CMD the Tribunal also received from the Applicant an email dated 28 February 2022.

The following issues are not in dispute between the parties:-

- The Respondent is the heritable proprietor of the Property.
- The Respondent leased the Property to the Applicant in terms of a Tenancy Agreement that commenced on 1 June 2017 ("the Tenancy Agreement").
- At the outset of the Tenancy Agreement the Applicant, at the request of the Respondent, paid to the Respondent a deposit of £460.

- The Applicant gave notice to the Respondent on 10 November 2021 of her termination of the Tenancy Agreement.
- The Tenancy Agreement ended on 8 December 2021.
- The Respondent did not, at any point during the tenancy or subsequently, pay the deposit into an approved scheme as required in terms of Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Regulations").
- At the end of the Tenancy Agreement, the Respondent refunded to the Applicant £325 of the deposit and, by agreement, retained the balance of £135 in respect of rent due by the Applicant to the date of termination of the Tenancy Agreement.

The Case Management Discussion

In addition to the application and the written representations of the parties, the Tribunal had regard to the following oral submissions:-

For the Applicant –

- i. That the Applicant moved out the Property and returned the keys to the Respondent on 22nd of November 2021.
- ii. That previously on 2 March 2021 the Applicant delivered a letter to the Respondent which included, amongst other matters, a request that the Respondent provide to the Applicant information on the tenancy deposit scheme into which the Applicant's deposit had been paid.
- iii. That the Applicant also asked the Respondent orally on a number of occasions to confirm that the approved scheme into which the deposit had been paid.
- iv. That the Respondent it could have lodged the deposit into an approved scheme at any point thereafter but failed to do so.
- v. That in addition to the three cottages leased by the Respondent on land owned by him and ancillary to his farm, the Respondent leased other properties elsewhere. The Applicant was unable or unwilling to provide details of these properties to the Tribunal as the information had been provided to her by a friend who is an existing tenant of the Respondent.
- vi. It that the Respondent had rented out the cottages at the farm for a period of at least 10 years.

For the Respondent

- i. That the use of the word "safeguarded" in the Respondents written representations overstated the Respondent's actions with regard to the Applicant's deposit but Mr Walker believed that the monies had been paid into a separate bank account held by the Respondent in respect of the Applicant. No evidence to that effect was produced.
- ii. That the Respondent was aware of the Regulations and did not to deal with deposits in terms thereof.
- iii. That certain advice had been given to the Respondent by Mr Walker which had been taken on board by him and he had acted in accordance with that advice such that all deposits held by the Respondent in respect of tenancy agreements are now lodged in an approved scheme.

- iv. That the Property is one of three cottages owned and leased by the Respondent. Mr Walker was unaware of whether the Respondent leased other properties elsewhere.
- v. That following the termination of the Tenancy Agreement, the Respondent refunded to the Applicant the agreed sum of £325 without difficulty and did so seamlessly.
- vi. That Mr Walker did not take issue with the suggestion that the Respondent had been renting properties to tenants for at least 10 years.
- vii. That it was accepted that in the absence of paying the deposit into an approved scheme the Applicant was deprived of the use of the adjudication process operated by tenancy deposit schemes which, in the event, was not required.
- viii. That the Respondent was content that the Tribunal make a decision today on the application.

Reasons for Decision

The Tribunal takes a landlord's failure to comply with the Regulations very seriously.

In terms of Regulation 10 of the Regulations it is stated:-

"If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal -

(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit;"

Having admitted a breach of the Regulations the Tribunal is obliged to make an order against the Respondent.

In determining the amount payable by the Respondent to the Applicant the Tribunal took into account the following:-

- i. That the Respondent is a commercial landlord who lets a number of properties and has done so for at least 10 years.
- ii. That the Respondent is aware of or ought to have been aware of the Regulations.
- iii. That other deposits taken by the Respondent from other tenants from time to time have not been lodged into an approved scheme as required in terms of the Regulations.
- iv. That the Applicant's deposit was unprotected for the entire duration of the tenancy being a period in excess of four and one half years.
- v. That the Applicant was deprived of the adjudication process operated by an approved scheme operating under the Regulations relative to the return of the deposit should such an adjudication have been needed.
- vi. That the Respondent's failure to comply with the Regulations is not excusable.
- vii. That despite the Applicant drawing the Respondent's attention to the fact that her deposit ought to be lodged into an approved scheme he still failed to do so.
- viii. That the Respondent's failure to adhere to the terms of the Regulations sits towards the most serious end of the scale of penalties available to the Tribunal in terms of the Regulations.
- ix. That the Respondent refunded to the Applicant promptly after her removal from the Property the agreed sum of £325.


The Tribunal therefore determined that, having regard to the foregoing, the Respondent must pay to the Applicant a sum of £1,150 by way of a penalty for his failure to comply with the Regulations, being the 2.5 times the deposit.

Decision

The Respondent is ordered to pay to the Applicant a sum of £1,150.

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.

 Gillian Buchanan

29th March 2022

Legal Member/Chair

Date