



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/PR/18/1487

Re: Property at 35 Talbot Crescent, Coatbridge, ML5 5GB (“the Property”)

Parties:

Miss Paula Daniels, 102 Croy Road, Coatbridge, ML5 5JG (“the Applicant”)

Mrs Sharon McEwen, 35 Talbot Crescent, Coatbridge, ML5 5GB (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision (in absence of the Applicant)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment against the Respondent in the sum of £600.00.

Background

1. By application dated 16 April 2018 the Applicant applied to the Tribunal for an order for payment in respect of an application under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.
2. In her application the Applicant sought the return of her deposit of £600.00 she had paid to the Respondent at the commencement of her tenancy.
3. The applicant provided the Tribunal with copies of documentation purporting to be a Short Assured Tenancy agreement between the parties, a Form AT5 and a Notice to Leave.
4. By Notice of Acceptance dated 25 June 2018 a legal member of the Tribunal with delegated powers accepted the application and the case was referred to a Case Management Discussion.

5. Intimation of the Case Management Discussion was received by the Respondent on 1 August 2018. The Respondent requested a postponement of the Case Management Discussion to be held on 31 August 2018 as she was to be out of the country between 5 and 13 August. This request was refused as the Tribunal felt that the Respondent would have sufficient time to seek professional advice in advance of the Case Management Discussion following her return on 13 August.
6. By correspondence dated 16 August 2018 the Respondent lodged with the Tribunal written representations and productions. These were in respect of damage to the property said to have been caused by the Applicant and the cost of repairs to the property.

Case Management Discussion

7. A Case Management Discussion was held at the Glasgow Tribunals Centre, 20 York Street, Glasgow on 31 August 2018. It was attended by the Respondent. The Applicant did not attend nor was she represented.
8. The Respondent confirmed that the Applicant had commenced occupation of the property in 2012. According to the Respondent at that time she had been friendly with the Applicant and had not used a letting agent to prepare the tenancy agreement but had used one purchased from W H Smith. Thereafter from time to time further similar agreements had been signed by the parties all purporting to be short assured tenancies enduring for a period of one year.
9. The Respondent confirmed that prior to the tenancy commencing the Applicant had not been provided with a Form AT5 or with documents relating to any of the grounds for possession of the property. The Respondent said she had never been a landlord before and had been in two minds as to whether to sell the property or rent it out. She had decided to rent it as she had been friendly with the business partner of the Applicant.
10. The Respondent confirmed she had never applied to be registered as a landlord. She said that this was due to ignorance on her behalf.
11. The Respondent confirmed that she had sent a Form AT5 to the Applicant in December 2017 and that this was after the tenancy had commenced. She said that she had not known that she had needed one up till then.
12. The Respondent said that she had put together the Notice to Leave from documents she had found on the internet after telling the Respondent that she wished to move back into the property herself. According to the Respondent the Applicant had amicably agreed to move out of the property after being given the Notice to Leave.

13. The Respondent confirmed that the deposit amounted to £600.00 and had been paid to her by the Applicant at the commencement of the tenancy. The Respondent confirmed that she had never put the deposit into an approved Tenancy Deposit Scheme. She said that she had been unaware of the need to do so.
14. The Respondent confirmed that the Applicant had requested the return of her deposit. The Respondent confirmed she had retained the deposit. The Respondent said that she felt she was entitled to do so as the Applicant had caused damage to the property during the tenancy that would cost over £12000.00 to repair as could be seen from the documents lodged as productions.
15. The Respondent said she was unaware of the terms of Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011("the Regulations") . She did not know the Tribunal could award the Applicant up to three times the amount of the deposit or that the Tribunal must make an order if satisfied that the Respondent had not complied with any duty under Regulation 3, the Tribunal's discretion being limited to the amount to be awarded.
16. The Respondent said that she did not think she would be able to recover any of the cost of the repairs to her property from the Applicant as she was no longer in business and she believed she had no assets. It would therefore be unfair if she had to pay the applicant but get nothing back.
17. The Respondent said that she wanted the matter brought to an end and she would be prepared to having an order granted against her for payment of the deposit to the Applicant rather than have it continued to a further hearing.

Findings in Fact

18. The parties entered into an Assured Tenancy sometime in 2012. There was never a Short Assured Tenancy in place as no Form AT5 was served on the Applicant prior to the tenancy commencing.
19. The Tenancy agreement did not incorporate into it any of the grounds for possession in terms of Schedule 5 of the Housing (Scotland) Act 1988 therefore it would not have been open to the Respondent to bring the tenancy to an end as she purported so to do by serving the Notice to Leave on 1 February 2018.
20. After being asked to leave the property the applicant vacated it in April 2018 and requested the return of her deposit.
21. The Respondent refused to return the deposit on the grounds that the Applicant had caused damage to the property and the cost of repair was significantly greater than the deposit.

22. The Respondent failed to lodge the deposit of £600.00 in an approved Tenancy Deposit Scheme and was therefore in breach of Regulation 3 of the Regulations.
23. Any alleged damage to the property said to have been caused by the Applicant and the cost of repair does not form a relevant defence to the application.

Reasons for Decision

24. Although the Applicant did not attend the Case Management Discussion it was quite clear from her application the basis on which she was seeking an order from the Tribunal and the tribunal felt it could proceed in her absence.
25. The Respondent was quite frank in her answers to questions from the Tribunal. This was a case where in an effort to avoid some cost at the commencement of the lease the Respondent had chosen, possibly with the encouragement of the Applicant with whom she was at that time on friendly terms, to purchase an "off the shelf " agreement without fully realising the potential pitfalls. As a result by not serving an AT5 and by not incorporating the grounds in Schedule 5 the Respondent was effectively giving the Applicant a very secure form of tenancy that might be difficult to bring to an end. However that does not really form part of the issues in the current application.
26. The issues to be determined by the Tribunal in respect of this application are firstly whether or not the Applicant's deposit was lodged in accordance with Regulation 3 of the Regulations. The Respondent admitted that it had not. Secondly that being the case what amount should the Respondent be ordered to pay the Applicant in terms of Regulation 10.
27. The Respondent sought to argue that as the Applicant had over the course of the tenancy caused substantial damage to the property the Tribunal should take this into account by not making any award as the cost of repair would be many times greater than any amount the Tribunal could award the Applicant. The Respondent also argued that account should be taken of the fact that the Applicant had no assets and therefore the Respondent would be unable to recover the cost of any repairs from her.
28. Whilst the Tribunal could understand the reasons for the Respondents argument it was of the view that in law they were misplaced. The Respondent may or may not have a remedy against the Applicant for any alleged damage to the property caused by her during the course of the tenancy but that does not form a defence to this application. The Tribunal's role is to consider the degree of seriousness of the breach of the Regulations and calculate an amount to award based on that breach. The Tribunal therefore has to take account of the length of time that the Respondent retained the deposit unlawfully. The Regulations provide for the deposit being lodged in an approved scheme within 30 days. The Respondent retained the deposit for

some six years. Had the applicant been seeking an award up to three times the amount of the deposit it might have been difficult for the Respondent to have argued against that but as the Applicant in her application only made reference to wanting her deposit back the Tribunal was of the view that in the circumstances it would be appropriate to make an order for payment to the Applicant of £600.00 the amount of the deposit rather than a multiple thereof. The Tribunal also noted that the Respondent was in the circumstances prepared to consent to such an order.

Decision

29. The Applicant is entitled to an order against the Respondent for payment to the applicant of the sum of £600.00.

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

31 AUGUST 2018

Date