

Housing and Property Chamber
First-tier Tribunal for Scotland



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/18/1862

Re: Property at 20C Fullarton Street, Kilmarnock, East Ayrshire, KA1 2QT (“the Property”)

Parties:

Miss Morag MacDonald, 10 Munro Avenue, Kilmarnock, East Ayrshire, KA1 2JY (“the Applicant”)

Mr James Mackenzie, 33 Castle Drive, Kilmarnock, KA3 1TN (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent as landlord for the property at 20C Fullarton Street Kilmarnock East Ayrshire KA1 2QT did not comply with any duty in Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 and makes an order for the Respondent to pay to the Applicant the sum of one thousand pounds (£1000).

This is a case management discussion ‘CMD’ regarding an application in terms of Rule 103 of the First-tier Tribunal for Scotland (Procedure) Regulations 2017 “the rules” for a penalty where a landlord has not paid the deposit into an approved scheme in terms of regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011, ‘the regulations’. The application was made by Miss Morag MacDonald on 24 July 2018. The Applicant attended the CMD and was accompanied by Mr Lewis Campbell as supporter. The Respondent did not attend and was not represented. The tribunal had sight of the sheriff officer’s execution of service dated 16 October 2018 which confirmed the papers and notification of the CMD were served on the Respondent on that date. The tribunal was satisfied that

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appropriate notification had been done in terms of rule 24. The tribunal proceeded to hear the application in terms of rule 29.

The tribunal had before it the following copy documents:

1. Application dated 18 July 2018 and received by the tribunal on the 24 July 2018.
2. Tenancy agreement signed on 16 July 2017.
3. Text messages regarding the return of the deposit.
4. Emails from the 3 tenancy deposit companies confirming the deposit was not lodged.

Case management discussion

Miss MacDonald confirmed that the tenancy came to an end on 26 June 2018. Her landlord inspected the property and initially did not raise any issues regarding the condition of it. She requested the return of the deposit. The sum of £50 was returned which was an advance payment of rent. The deposit was not returned despite requests being made. It was not lodged in a scheme. She exhibited a WhatsApp message from the Respondent which was sent after the application was initially sent to him by the tribunal. He offered to settle the case by returning the deposit and £100 and he stated that he has outstanding issues with the condition of the property. She declined this offer and does not accept that there are any issues regarding the condition of the property. The Applicant understands that the Respondent rents out at least three other properties.

Findings in fact

1. The tribunal is satisfied that the Applicant paid a deposit of £375 to the Respondent around the time she signed the lease for the property in July 2017.
2. The tribunal is satisfied that the deposit was never lodged in an approved scheme and the notifications laid down in regulation 42 were not carried out.
3. The tribunal is satisfied that the Respondent failed to comply with any of the duties in regulation 3.

Reasons

The tribunal is satisfied that a clear breach of regulation 3 has occurred and that an order in penalty is appropriate in terms of regulation 10. The tribunal is satisfied that the Respondent has received notification of the CMD and the tribunal is satisfied that the procedure has been fair. The tribunal has sufficient information before it to make a decision.

The tribunal considered the gravity of the breach. The lease refers to payment of a deposit but is silent on the deposit schemes. The Respondent appears to have other

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properties which he rents out. If he has issues regarding the condition of the property this could have been dealt with by the dispute resolution system operated by the tenancy deposit schemes if the Respondent had complied with his obligations to lodge the deposit. The tribunal reviewed all of the recent cases regarding tenancy deposit schemes. The tribunal is mindful of the need to proceed in a manner that is fair proportionate and just having regard to the seriousness of the breach (Sheriff Jamieson in Kirk-v- Singh 2015 SLT (sh ct) 111). This is a breach at the upper end of the scale and the tribunal decided that a penalty of one thousand pounds was fair proportionate and just in all of the circumstances.

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.

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6 November 2018

Lesley A Ward Legal Member

Date