

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 section 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/19/3217

Re: Property at The Old Pottery, Main Street, Lilliesleaf, MELROSE, TD6 9JD ("the Property")

Parties:

Miss Julie Craddock, 14 Yarrow Terrace, Selkirk, Scottish Borders, TD7 5AR ("the Applicant")

Mrs Shirley Sturt, Wollrig, Ashkirk, Selkirk, TD7 4NZ ("the Respondent")

Tribunal Members:

Maurice O'Carroll (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent did not comply with the duties contained within Regulation 3 of the 2011 Regulations and ordered the Respondent to pay to the Applicant the sum of £1,000.

Background

1. A Case Management Discussion ("CMD") was held at 11.30am at the Heart of Hawick Tower Mill, Hawick. Both the Applicant and the Respondent were present in person.

Discussion at the CMD

2. The Applicant explained that she and her former partner became co-tenants of the Property on 9 March 2019. A copy lease was provided to the Tribunal.
3. About a week prior to the commencement of the lease, the Applicant paid the deposit amount of £500 to the Respondent.

4. For personal reasons, the Applicant required to leave the Property on or about 8 July 2019 without providing the required two months' notice. She in fact moved to an address of which the Respondent's son was the Landlord following agreement between the parties. The rent payable for the new rental property was paid by the Applicant to the Respondent and then forwarded by the Respondent to her son.
5. The Applicant sought a return of the deposit from the Respondent. That request was refused. The reason given was that there were rent arrears in respect of the tenancy over the Property.
6. At some point, the co-tenant left the Property and did not pay all of the rent that was due. The Respondent was therefore left with rent arrears in the region of £700.
7. The Respondent frankly accepted that she had not paid the deposit into an approved custodian in terms of the Tenancy Deposit Scheme set up by the 2011 Regulations. She was aware of the requirement to do so, but had decided not to as her understanding was that if the deposit was paid to the Tenancy Deposit Scheme, she would be unable to use the deposit to pay for rent arrears. She had therefore knowingly failed to comply with the 2011 Regulations.
8. The Respondent now has a new tenant in the Property. The new deposit in relation to that rental agreement has been lodged with the Scheme as required by the 2011 Regulations. The Respondent has stated that she intends to comply with the legislation from now on.

Findings in fact

9. The following findings in fact were made by the Tribunal
 - The parties entered into a Tenancy Agreement on 9 March 2019
 - The rent payable was £525 per calendar month
 - The deposit which was paid by the Applicant was £500
 - The deposit has not been returned to the Applicant
 - The deposit was never paid into an approved Deposit Scheme by the Respondent as required by the 2011 Regulations
 - The Respondent knowingly failed to comply with the 2011 Regulations as she believed to do so would reduce her scope to seek repayment of any rent arrears, however
 - The Respondent now complies with the 2011 Regulations in respect of rental agreements which she currently has in place

Decision

10. Under the 2011 Regulations, the Tribunal is empowered to award a sum equivalent to three times the amount of the deposit paid. In light of the Respondent's assurance that she now complies with the Regulations, the

Tribunal is minded to reduce the full extent of the penalty available to two times the amount of the deposit.

11. Based upon the foregoing findings in fact, the Tribunal finds that the Respondent breached her obligation under Regulation 3 of the 2011 Regulations. It therefore orders the Respondent to make payment to the Applicant of the sum of £1,000, being two times the amount of the deposit, 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.

M. O'C

Legal Member/Chair

11 December 2019

Date