



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

Chamber Ref: Reference number: FTS/HPC/PR/22/3122

Property: 2/2, 13 West Street, Paisley, PA1 2UJ (“The property”)

Parties:

Ms Frances MacDonald, residing at 2/2, 44 Barterholm Road, Paisley, PA2 6PD (“the Applicant”)

And

Mr Masood Afzal, residing at 27 Sandray Gardens, Newton Mearns, G77 5GX (“the Respondent”)

Tribunal Members:

Paul Doyle (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has breached his obligations under regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Background

1. On 10/02/2021 the respondent let to the applicant the property at 2/2, 13 West Street, Paisley, PA1 2UJ. A Tenancy agreement was entered into which required payment of a deposit of £600. The tenancy ended on 08/07/2022 when the applicant moved out of the property. By that time, the applicant had not paid rental for 6 months. Parties agreed that the deposit would be applied to the arrears of rental, and the deposit was paid to the respondent.

The Case Management Discussion

2. A Case Management Discussion took place before the Tribunal by telephone conference at 10.00am on 17 November 2022. The Applicant represented by Mr K Montgomery from Paisley CAB. The respondent was present and not represented.

3. The Applicant's position is set out fully in her written application. The Respondent candidly agreed that a deposit of £600 was paid on 10/02/2021, and the deposit was not placed in an approved tenancy deposit scheme until 12/01/2022. The respondent accepted that a payment order will be made today because he agrees the material facts of the case.

4. Both parties agree that the deposit was not lodged with an approved tenancy deposit scheme within 30 days of commencement of the tenancy. Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 tells me that I must make a payment order against the respondent. I can dispose of this case today, without the need for a further hearing.

Findings in Fact

6. On 10/02/2021 the respondent let to the applicant the property at 2/2, 13 West Street, Paisley, PA1 2UJ. A Tenancy agreement was entered into which required payment of a deposit of £600. The tenancy ended on 08/07/2022 when the applicant moved out of the property. The applicant did not maintain prompt and regular payments of rental and when she vacated the property the rental was more than six months in arrears.

7. Before taking entry the Applicant paid a deposit payment of £600 to the respondent. That deposit was not paid into an approved tenancy deposit scheme until 12/01/2022. When the tenancy ended, parties agreed that the deposit would be applied to the arrears of rental, and the deposit was paid to the respondent.

8. The Applicant still owes the respondent approximately £3,000 in arrears of rental.

9. The respondent has not previously breached the 2011 regulations. There are no outstanding applications against the respondent.

Reasons for Decision

10. It is beyond dispute that a deposit of £600 was paid at the commencement of the tenancy. On the admitted facts, the deposit was not paid into an approved scheme when it should have been.

11. I have to weigh the aggravating factors against the mitigating factors. The aggravating factors are

- (i) the respondent has one other rental property.
- (ii) the respondent had control of the deposit between February 2021 and January 2022;
- (iii) the respondent is aware of the 2011 Regulations.

12. The mitigating factors are that the respondent fully acknowledges his error & the respondent has no history of breaches of the 2011 Regulations. The respondent did not act maliciously; he had no intention of depriving the applicant of the deposit funds or profiting from those funds. The respondent experienced the loss of both of his parents during the tenancy and was distracted from business administration by grief.

Against those mitigating factors I must balance the undisputed fact that the deposit was unprotected for 11 months.

13. The Applicant asked me to make a payment order. The purpose of the order is not to enrich the applicant. The purpose of the order is to punish the respondent; to mark society's displeasure; to protect society and to ensure the enforcement of the 2011 Regulations in the future.

14. The amount of deposit was £600.00. For many months the deposit was unprotected. A payment order equivalent to the value of the deposit reflects the seriousness of the breach of the 2011 Regulations.

15. The appropriate level of payment order for breaching the 2011 Regulations is £600.00.

16. I have already noted that the purpose of a payment order is not to enrich the applicant. I have found in fact that the applicant owes the respondent approximately £3,000 in arrears of rental. The applicant and the respondent can agree that the payment order will be satisfied by reducing the amount of arrears of rental by £600.

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment to the Applicant of Six Hundred pounds (£600.00) within 14 days of service of this order.

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.

Paul Doyle

Legal Member

17 November 2022