

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 under regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/21/0104

Re: Property at 2 Garioch View, Cairntradlin, Kinellar, AB21 0SA (“the Property”)

Parties:

Keith Morris and Marilyn Morris, spouses residing together at Spoutside, Snaigow, Dunkeld PH8 0RD (“The applicants”)

and

Kenneth Marshall, trading as Craigmar Properties and residing at Concraig House, Mains of Congraig, Kingswells, Aberdeen, AB15 8RL (“the respondent”)

Tribunal Member: Paul Doyle (Legal Member)

Decision

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

Background

1. On 1 June 2019 the respondent let to the applicants the property at 2 Garioch View, Cairntradlin, Kinellar, AB21 0SA. A Private Residential Tenancy agreement was entered into which required payment of a deposit of £1,000.00. The tenancy ended on 7 November 2020.

The Case Management Discussion

2. A Case Management Discussion took place before the Tribunal by telephone conference at 2.00 pm on 8 April 2021. The Applicants were both present. Keith Morris spoke for both applicants. The respondent was neither present nor represented. The respondent has received notice of the hearing. Charles P Marshall

submitted written representations on behalf of the respondent on 22 March 2021. I am satisfied that I can justly determine this case in the respondent's absence.

3. The respondent's position is that his family operate a property business. Although the respondent took a deposit from the applicant, he knew nothing of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("The 2011 Regulations"). He preserved the deposit in an account in his company's name. When the tenancy ended he refunded the deposit within 14 days, so that the applicants have not suffered any loss. The respondent and his family reviewed their procedures in September 2020 and no longer take deposits from their tenants. The respondent accepts that he acted incorrectly and breached the 2011 Regulations.

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, in light of that admitted fact, 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

5. On 1 June 2019 the respondent agreed to let the dwelling-house at 2 Garioch View, Cairntradlin, Kinellar, AB21 0SA to the applicant. A tenancy agreement was entered into setting out the agreed rental and requiring a deposit of £1000. The tenancy agreement provides for payment of rental, but it has no provision for payment of a deposit. Instead, the tenancy agreement says that the first payment of rental is to be £2,420, thereafter the monthly payment of rental is £1,420.

6. Parties agree that before taking entry the Applicant paid a deposit payment of £1000.00 to the respondent. The respondent held that money in an account in his business name throughout the duration of the tenancy. Parties agreed to end the tenancy on 7 November 2020. The respondent refunded the deposit in full to the applicants within 14 days of the tenancy ending.

7. The respondent had no intention of depriving the applicant of repayment. The respondent acknowledges his error and has not taken deposit payments from tenants since September 2020. The applicants have not suffered loss as a result of the respondent's breach of the 2011 regulations.

8. The respondent is in the business of renting out properties. The respondent has a number of properties offered for rental in Aberdeenshire.

Reasons for Decision

9. It is beyond dispute that a deposit of £1000 was paid at the commencement of the tenancy. On the facts as I find them to be, the deposit was not paid into an approved scheme.

10. The respondent acknowledges his error. A full accounting for the deposit has been made. Against those mitigating factors I must balance the undisputed fact that the deposit was unprotected throughout the tenancy, and that the respondent is in

the business of renting out properties. The respondent has a number of properties offered for rental in Aberdeenshire.

11. The mitigating factors are

- (i) The applicants have not suffered loss
- (ii) The deposit was refunded to the applicants within 14 days
- (iii) The respondent admits that he has breached the 2011 Regulations.

12. The main aggravating factor is that the respondent is in the business of letting properties and appears to have been unaware of the requirements of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

13. The Applicant asked me to make a payment order. The applicants seek the maximum payment order. The respondent admits his culpability and suggest a payment order of £750.00 would be appropriate.

14. 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.

15. The amount of deposit was £1000.00. For the 17-month duration of the tenancy the deposit was not protected, even though the respondent makes a business of being a landlord. A payment order equivalent to 1.5 times the value of the deposit reflects the seriousness of the breach of the 2011 Regulations.

16. The appropriate level of payment order is £1500.00.

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment to the Applicant of One Thousand Five Hundred pounds (£1500.00) 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.

P Doyle

Legal Member

8 April 2021