

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 10 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”)

Chamber Ref: FTS/HPC/PR/20/0313

Re: Property at 66 Cables Drive, Alexandria, G83 9EN (“the Property”)

Parties:

Miss Michelle Carmichael, 66 Cables Drive, Alexandria, G83 9EN (“the Applicant”)

Mr Tadeusz Bartosewicz, 16 Dalskeith Avenue, Paisley, PA3 1AF (“the Respondent”)

Tribunal Members:

Graham Dunlop (Legal Member)

Decision (in the absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment by the Respondent to Applicant of the sum of £1,450 (ONE THOUSAND FOUR HUNDRED AND FIFTY POUNDS STERLING) should be made.

1. Background

- a. The parties entered a tenancy on 1st August 2018. The tenancy purports to be a Short Assured Tenancy (“the tenancy”). The applicant paid a deposit of £580. The tenancy states that “the deposit will be kept by the landlord under circumstances where the landlord do(es) not have to use a tenancy deposit scheme and will not be registered with any schemes.”
- b. The applicant seeks an order for payment under regulation 10 of the 2011 Regulations.

2. CMD

- a. The Respondent did not attend or be represented at the CMD. Previous paperwork sent to his property at 16 Dalskeith Avenue, Paisley in February 2020 had been signed for and paperwork had previously been served by Sheriff Officers. The Tribunal checked the landlord registration address during the CMD which also showed the address in Paisley to be correct. The Respondent also failed to respond to the Direction intimated on 01/07/2020.

The Applicant explained that she had left the property on 3rd April 2020 and now resided at 1 Springfield Place, Springfield Terrace, St Boswell, TD6 0ER.

- a. The Applicant explained that the property at 66 Cables Drive was a 3 bedroom semi-detached house and at no time during the tenancy had the Respondent lived within the property. The Applicant believed that the Respondent may have been living and working outside of the UK during part of the tenancy.
- b. The Applicant advised that the Respondent's wife had been in contact with her and was made aware of the Tribunal proceedings. The Applicant had been in contact with Environmental Health of the local authority regarding necessary repairs to the Property. The Applicant believed that this had caused the Respondent to lodge the deposit with My Deposits Scotland in February 2020.

3. Findings In Fact

- a. The Tribunal finds that the Respondent failed to lodge the deposit with a scheme in accordance with regulation 3 of the 2011 Regulations.
- b. The Tribunal finds that the Respondent failed to provide the information required under regulation 42 of the 2011 Regulations.

4. Reasons for Decision

- a. The Respondent was aware of the tenancy deposit scheme by virtue of the terms of the tenancy.
- b. The Respondent purported to live at the address which he knew was inaccurate.
- c. The Respondent failed to provide any adequate explanation or mitigation for failing to comply with regulations 3 and 42 of the 2011 Regulations.
- d. The Respondent continued to assert that he lived at the Property when he finally lodged the deposit with My Deposit Scotland in February 2020

- e. In conclusion the Respondent was not in ignorance of his responsibilities and took continual steps to avoid his legal responsibilities under both regulations 3 and 42. Ultimately the Respondent did not provide accurate information to My Deposit Scotland. The Respondent offered no explanation or mitigating factors. In all the circumstances the Tribunal was of the view that an order in the sum of £1,450 (being 2.5 times the deposit) was appropriate in 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.

Graham Dunlop

21.7.2020

Legal Member/Chair

Date