

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Regulations 3 and 10 of the Tenancy
Deposit Schemes (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/20/1803

Re: Property at 22 Hayhill, Ayr, KA8 0SQ (“the Property”)

Parties:

Ms Jami Aird, 36 Wilson Street, Ayr, KA8 9LS (“the Applicant”)

Mrs Jane Shennan, Farden Farm, Girvan, KA26 9LB (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment in the amount of £1000 should be made.

Background

On 25th August 2020 the Applicant lodged an application with the Tribunal under Rule 103 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“The Procedure Rules”), alleging that the Respondent had not lodged the Applicant’s deposit in a Tenancy Deposit Scheme in accordance with the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“TDS”). Lodged with the application were: -

1. Copies of emails and texts between the parties.
2. Copy of some pages of the tenancy agreement
3. Copy of a Notice to Leave.

The Applicant also made allegations of wrongful eviction. The Tribunal Administration wrote to the Applicant telling her that such allegations would need to be the subject of a separate application.

Subsequent to making the Application the Applicant also lodged some pages of a Short Assured Tenancy between her and Gary Aird, and the Respondent.

The Application was served on the Respondent by Sheriff Officer on 21st October 2020.

The Respondent made a written submission to the Tribunal, by email on 10th November 2020. She produced a copy of the tenancy agreement signed by the Applicant in 2018 and referred to the fact that it stated that no deposit was paid. She also made allegations of fairly serious damage to the property, lodging invoices to substantiate this, and also stated that there were rent arrears.

Case Management Discussion

The Case Management Discussion ("CMD") took place by teleconference. Both parties dialled in and represented themselves.

The Chairperson introduced everyone and explained the purposes of a CMD in terms of Rule 17. She explained that the proceedings were not to be recorded, and she checked with each party that they understood her explanation.

The Chairperson explained to the Applicant that the case was purely about whether a deposit was paid and should have been lodged in a Scheme. She confirmed that the Applicant had already been advised that any allegations regarding wrongful eviction would need to be brought under a separate application. She said that she understood and had decided not to pursue the other matter.

The Chairperson explained to the Respondent that the case was purely about whether a deposit was paid and should have been lodged in a Scheme. She confirmed that if the Respondent wanted to bring allegations of damage she would need to do that in a separate application. The Respondent confirmed that she understood.

The Chairperson started by having the parties agree when the tenancy came to an end. They could not agree on the exact date, but they did agree that it had ended at some point in August 2020. The Chairperson was therefore satisfied that the Application had been brought within the three-month time limit laid down in Regulation 9(2).

The Chairperson asked the Respondent to confirm when the tenancy had begun. She said that it began on 11th May 2018, and that no deposit had been paid. The Applicant did not agree. She said that it had begun on 29th September 2016, and had

been a joint tenancy with her husband, from whom she was now divorced. She said that when her husband moved out she was asked to sign the new tenancy agreement, and she was told that the deposit would be transferred to the new contract.

The Respondent said that on 1st September 2016 she had entered in to a tenancy agreement for the property with Jami and Gary Aird. She had received a £500 deposit. No further deposit had been paid by Mrs Aird. The Chairperson asked if that deposit had been lodged in an approved scheme. The Respondent said that regrettably it had not. She had been ignorant of the need to deposit it in a scheme. The money was lodged in a bank account. The Chairperson asked if it had been returned to anyone when the new tenancy agreement had been signed. The Respondent said that it had not. The Respondent was of the view that the new tenancy agreement superseded the previous one.

The Chairperson decided that there were issues which required to be decided at a hearing. These are:

- a) Whether the tenancy agreement signed in 2018 by the Applicant alone superseded the one signed in 2016 by the Applicant and her now ex husband;
- b) In the event that it did supercede the previous one should the deposit have been transferred to the new agreement.

A Hearing was fixed for 18th January 2021 at 10am.

Hearing

The Hearing took place by teleconference on 18th January 2021. Both parties dialled in and represented themselves.

The Chairperson began by introducing herself and the Ordinary Member, Mr Darroch. She explained the process to be followed and confirmed with the parties that they understood.

The Chairperson went over what had happened at the CMD, and confirmed that the disputed issues were:-

- a) Whether the tenancy agreement signed in 2018 by the Applicant alone superseded the one signed in 2016 by the Applicant and her now ex husband;
- b) In the event that it did supercede the previous one should the deposit have been transferred to the new agreement.

The parties agreed.

The Chairperson went through a series of facts and asked each party if they agreed. The answers were as follows:

1. The Respondent entered in to a Short Assured Tenancy Agreement, dated 18th September 2016, with date of entry at 29th September 2016, with The Applicant and her then husband Gary Aird. – **both parties agreed**

2. A deposit of £500 was paid to the Respondent – **both parties agreed**
3. The deposit was not lodged in an approved scheme in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 – **both parties agreed**
4. Mr and Mrs Aird separated in early 2018 – **The Applicant agreed, the Respondent had no direct knowledge**
5. A new tenancy agreement was drawn up by the Respondent and signed by the Applicant dated 17th May 2018 – **both parties agreed**
6. The deposit was not returned when the new agreement was signed – **both parties agreed**
7. No further deposit was taken when the new agreement was signed – **both parties agreed**
8. The tenancy came to an end in August 2020, the exact date was not relevant – **both parties agreed**
9. The deposit was not returned by the Respondent to the Applicant at the end of the tenancy – **both parties agreed.**

The Chairperson asked the Respondent to address the Tribunal regarding the disputed issues. The Respondent said that believed that the new tenancy agreement superseded the previous one, but it was obviously a matter for the Tribunal to decide. She was of the view that the Applicant had signed it and therefore accepted it, and if she was in doubt she should have sought legal advice.

The Chairperson took the Respondent to section 18 of the original tenancy agreement which was headed “Ending The Tenancy”. She went through the four methods of ending the tenancy with the Respondent, and the Respondent confirmed that none of the steps laid out in the section had been undertaken. She said that no party had given any written notice to any other party.

The Chairperson asked the Respondent for the reasons why she had not lodged the deposit in an approved scheme. She said it was complete naivety on her part. She thought it would be fine. She should have taken advice. She knew of the existence of the Scheme, but did not think it was a legal requirement to use it.

The Chairperson asked the Applicant if she had any questions. She said she did not but wished to comment that the tenancy agreement clearly referred to the Regulations and the Respondent had signed the Agreement. The Applicant did not see how she could plead ignorance of it.

The Ordinary Member, asked the Respondent if 22 Hayhill, Ayr was the only rental property which she had. The Respondent said that she had another one, but she did not have it at the time she rented 22 Hayhill to the Applicant.

The Ordinary Member asked if the property was now re-let, and if so had a deposit been taken and lodged in a Scheme. The Respondent said that it had been relet and that the deposit taken had been lodged appropriately.

The Ordinary Member asked why the Respondent had not offered the deposit back when the new tenancy agreement was signed. The Respondent said that she should have done that, and should have taken advice. She said that she thought that the deposit would cover the Applicant until she left the property.

No one had any further questions. The Tribunal adjourned to consider their decision.

The Tribunal reconvened and advised the parties of their decision and the reasoning behind it.

Findings In Fact

1. The Respondent entered in to a Short Assured Tenancy Agreement, dated 18th September 2016, with date of entry at 29th September 2016, with The Applicant and her then husband Gary Aird;
2. A deposit of £500 was paid to the Respondent;
3. The deposit was not lodged in an approved scheme in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011;
4. Mr and Mrs Aird separated in early 2018 and Mr Aird left the property;
5. A new tenancy agreement was drawn up by the Respondent and signed by the Applicant dated 17th May 2018;
6. The deposit was not returned when the new agreement was signed;
7. No further deposit was taken when the new agreement was signed;
8. The tenancy came to an end in August 2020;
9. The deposit was not returned by the Respondent to the Applicant at the end of the tenancy;
10. No steps were taken to terminate the original tenancy.
11. The Respondent had only one rental property at the time she entered in to the SAT with the Respondent and her husband.

Reasons For Decision

The tenancy entered in to in 2016 was a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988. The 1988 Act lays down the methods for bringing such a tenancy agreement to an end. These were reiterated in the Short Assured Tenancy Agreement itself. None of the steps required to terminate the tenancy were taken, and the Tribunal found that the Short Assured Tenancy was still in existence. The signing of the Private Residential Tenancy Agreement by the parties in 2018 was therefore ineffective and did not constitute a fresh tenancy agreement.

The deposit taken in 2016 in relation to the Short Assured Tenancy should have been deposited in terms of Regulation 3 of the TDS, and therefor the Respondent was in breach of her obligations in terms of Regulation 3.

In terms of Regulation 10 the Tribunal can award a maximum of three times the amount of the deposit. After deliberating the Tribunal decided to award a sum amounting to twice the deposit.

The Tribunal noted that the deposit had been unprotected for a period of 4 years, and that the Respondent had not returned it at the end of the tenancy as she considered that the Applicant was in rent arrears, and had left the property in a damaged state. These types of disputes are exactly why the Regulations were enacted in the first place. They provide a mechanism for a fair resolution of such disputes.

However, the Tribunal did not think that the breach was at the top end of the scale, meriting the maximum penalty. They took in to account the Respondent's position that she was not a professional landlord and that this was the first property she had rented out. She appreciated that she had acted in error and should have taken advice. She confirmed that she had placed the deposit for her current tenant in to an appropriate scheme.

The Tribunal considered that a penalty of twice the amount of the deposit was appropriate.

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.

A Kelly

18 January 2021

Legal Member/Chair

Date