



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

Chamber Ref: FTS/HPC/PR/21/0013

Re: Property at 34 Tay Avenue, Comrie, PH6 2PF (“the Property”)

Parties:

Mrs Sheila Summers, 34 Tay Avenue, Comrie, Crieff, PH6 2PF (“the Applicant”)

Ms Zandra Black, 40 Broadstraik Avenue, Westhill, Aberdeen, AB32 6DA (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member)

Decision

- 1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) being satisfied that the Respondent as landlord of the property at 34 Tay Avenue, Comrie, Crieff, PH6 2PF did not comply with a duty in Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011, makes an order for the Respondent to pay to the Applicant the sum of one hundred pounds (£100).**
- 2. This was a case management discussion ‘CMD’ in connection with an application in terms of Rule 103 of the First-tier Tribunal for Scotland (Procedure) Regulations 2017 ‘the rules’ for an order for a penalty in terms of Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011, ‘the regulations’. The application was made by Mrs Sheila Summers on 20 December 2020. The applicant attended the CMD. The respondent was represented by Ms Rebecca Coltart solicitor.**

3. The tribunal had before it the following copy documents: -

- (1) Application dated 20 December 2020 and received by the tribunal on 30 December 2020.
- (2) Tenancy agreement dated 22 February 2020.
- (3) Notice to leave dated 5 October 2020.
- (4) Receipt for tenancy deposit dated 6 February 2020.
- (5) Email from applicant to respondent dated 25 October 2020.
- (6) Safe Deposits Scotland certificate dated 4 November 2020.

Discussion

4. The tribunal noted that the deposit was paid on 6 February 2020 but was not lodged until 4 November 2020. Regulation 3 provides that a tenancy deposit should be paid within 30 working days. Mrs Summers stated that after she received the notice to leave, she sought advice from Shelter and the local authority housing department and both organisations drew her attention to the deposit scheme and the requirement to lodge the deposit within 30 working days. She then contacted the respondent, and this led the respondent to lodge the deposit. Mrs Summers is still living in the property, so the deposit has not yet been returned.
5. Ms Coltart stated that client previously resided in the property. She registered as a landlord in January 2020 with a view to renting the property out to the applicant. This is her first and only rental property and she is now looking to move back into it. She stated that the respondent and her partner both became ill with covid and due to the upset of the pandemic and the illness the need to lodge the deposit was overlooked. It was Ms Coltart's submission that as soon as the respondent became aware of her oversight, she lodged the deposit. The failure was of short duration and there was no prejudice to the applicant.
6. The applicant did not accept that covid was entirely to blame for the failure to lodge the deposit. She would have expected to see some medical evidence in support of the respondent's position to show when she was ill.

7. Findings in fact

- The respondent is the owner of the property.
- The applicant rented the property from the respondent from 22 February 2020 until present.
- The applicant paid a deposit of £600 to the respondent on 6 February 2020 as her landlord.
- The deposit was not lodged into an approved scheme within 30 working days of 22 February 2020.
- The deposit was lodged late on 4 November 2020.

Reasons

8. This was a breach of the regulations as the respondent's failed to lodge the deposit into a scheme within 30 working days. This was due to the respondent's oversight. She and her partner contracted covid and being ill together with the pandemic meant that the need to lodge the deposit slipped her mind.
9. The tribunal reviewed all of the recent cases regarding tenancy deposit schemes and noted that in the case of Kirk-v-Singh 2015 SLT (Sh Ct) 111 sheriff Jamieson was mindful of the need to:-

proceed to impose a sanction which is "fair, proportionate and just having regard to the seriousness of the noncompliance.

10. The tribunal considered this to be a minor breach. The breach was not wilful and there has been no prejudice to the applicant as the deposit has been lodged and the applicant continues to live in the property. Once the respondent became aware of her oversight, she lodged the deposit. This is the first time the respondent has rented out her property, so she is not an experienced landlord. The tribunal was satisfied that it has sufficient information before it to make a decision and the procedure had been fair. Accordingly, the tribunal decided a penalty of £100 was fair, proportionate and just in all of 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.

Lesley A Ward Legal member.

25 February 2021