



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under the Housing (Scotland) Act 2006 section 121 and Regulation 9 the Tenancy Deposit Schemes (Scotland) Regulations 2011Section

Chamber Ref: FTS/HPC/PR/21/0913

Re: Property at 5 Roods Place, Kirriemuir, Angus, DD8 4EU (“the Property”)

Parties:

Miss Susan Stewart, 5 Roods Place, Kirriemuir, Angus, DD8 4EU (“the Applicant”)

Mrs Christine Ovenstone, Wellgreen, Mid Road, Kirriemuir, Angus, DD8 4PT (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Landlord is in breach of her obligations in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“Regulation 3”). The Respondent shall make payment to the Applicant in the sum of FOUR HUNDRED AND TWENTY POUNDS (£420) STIRLING

Background

1. The Tribunal received an application from the Applicant in terms of Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Rules 2017 dated 7th April 2021.
2. The Applicant advised in the application that the tenancy had commenced on 7th February 2020. The tenancy is a private rented tenancy. The Applicant claimed that the Respondent did not place the deposit in any scheme or provide details when asked regarding the placing of the deposit in any scheme.

3. The deposit paid was £420, paid approximately 1 week after the tenancy commenced on 7th February 2020.
4. On 24th May 2021, all parties were written to with the date for the Case Management Discussion ("CMD") of 28th June 2021 at 2pm by teleconferencing. The letter also requested all written representations be submitted by 14th June 2021.
5. The Respondent received intimation of the Case Management Discussion by Sheriff Officers on 25th May 2021. Certificate of Execution of Service states that the Sheriff officers delivered the papers personally upon the Respondent.

The Case Management Discussion

6. The Tribunal held a Case Management Discussion ("CMD") on 28th June 2021 at 2pm by teleconferencing. The Applicant was present and represented herself. The Respondent was present and represented herself.
7. The Respondent confirmed to the Tribunal that she had not lodged the deposit in an approved scheme within the specified time limit. She stated that around the time of receiving the deposit her husband had health problems and there was concerns that he might not get treatment due to Covid restrictions. She was then diagnosed with a health condition. She did not continue her focus on her financial ventures including depositing the deposit in an approved scheme. She did do this in October after it was raised by the Applicant. The deposit was paid to her by Angus Council under a discretionary scheme though she had initially believed this to be a payment of rent. The Respondent has four properties in total. She told the Tribunal that she has always lodged the deposits on time previously. The Applicant is to move out of the Property on 18th August 2021 as she is looking to sell the Property. She is no longer able to continue with letting it. She will be looking to sell her other properties once each property reaches the end of each mortgage which will happen over the next few months.
8. The Applicant disputes that the Respondent and her husband were in ill health when she moved in the Property. She believes that the ill health occurred later on in the year. She had to make investigations herself regarding what happened to her deposit.

Findings in fact

- a. The Applicant paid a deposit of £420 approximately 1 week after the tenancy began on 7th February 2020.
- b. The start date of the tenancy was 7th February 2021.
- c. The tenancy is ongoing.
- d. The Applicant did not receive notice from the Respondent of details of the rent deposit scheme into which the deposit was been paid.
- e. The deposit was not paid into an approved scheme within the time limits
- f. The deposit was put into Safe Deposit Scotland on 8th October 2020.

- g. The Respondent did not meet her duties in terms of Regulation 3.

Decision

9. The Respondent has a duty under Regulation 3 to place the deposit in an approved scheme within the specified time but failed to do so. The Respondent confirmed to the Tribunal that she did not meet her duties in terms of Regulation 3. However, the Tribunal accepted that the deposit was lodged into a scheme significantly prior to the raising of the application. The Respondent is selling this property due to not being able to manage it any longer due to ill health. She is looking to sell her 3 other properties for the same reason. The Tribunal decided that a fair, just and proportionate sanction would be to order the Respondent to pay the Applicant one times the amount of the deposit (£420).

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.

Gabrielle Miller

28th June 2020

Legal Member/Chair

Date