



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

Chamber Ref: FTS/HPC/PR/21/1747

Re: Property at 20 Caledonian Road, Inverness, IV3 5RA (“the Property”)

Parties:

Miss Sandra Matos, 82 Kessock Avenue, Inverness, IV3 8BA (“the Applicant”)

Mr James Fraser, Willow Lodge, Bruce Gardens, Inverness, IV3 5HF (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member)

Decision (in absence of the Respondent)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent(s) for payment of the undernoted sum to the Applicant(s):

Sum of SEVEN HUNDRED AND FIFTY POUNDS (£750) STERLING

- Background
- 1. An application was submitted to the Tribunal under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. Said application sought an order be made against the Respondent on the basis that the Respondent had failed to comply with his duties to lodge a deposit in a tenancy deposit scheme within 30 days of the start of the tenancy in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”).

- The Case Management Discussion
2. A Case Management Discussion (“CMD”) took place on 30 September 2021 by tele-conference. The Applicant was personally present and representing herself. There was no appearance by or on behalf of the Respondent. The application had been served on the Respondent by Sheriff Office on 27 August 2021. Prior to the CMD, the Respondent had also lodged written representations. The Tribunal was satisfied that the Respondent was fully aware of the date and time of the CMD and that the CMD could proceed in his absence.
 3. The Applicant sought an order from the Tribunal on the basis that the Respondent had failed to comply with their duties to lodge a deposit in a tenancy deposit scheme within 30 days of the start of the tenancy in terms of Regulation 3 of the 2011 Regulations.
 4. The Applicant submitted that they had entered into a tenancy with the Respondent which commenced 1 May 2020. A copy of the tenancy agreement was lodged with the application. The Applicant paid a £750 deposit to the Respondent prior to the start of the tenancy. She received no notification from either the Respondent or a tenancy deposit scheme confirming that the deposit had been paid into a scheme. The Applicant vacated the property on 4 July 2021. Prior to vacating the Applicant contacted the Respondent to ask for details of the tenancy deposit scheme in which her deposit was held. The next day the Respondent’s wife appeared at the Property and offered her repayment of £700 in cash and advised that only £50 had been lodged in a tenancy deposit scheme and that this would be returned separately. The Applicant refused acceptance of the cash and asked for the deposit to be repaid to her by bank transfer once she had vacated the Property. The £700 was transferred to her account on 9 June 2021, in advance of her moving out of the Property. On the same date the Applicant received notification from Letting Protection Scotland advising that a request had been submitted by the landlord for the £50 held with them to be transferred to the Applicant. This was received by the Applicant thereafter. It was submitted that the Applicant had been entirely unaware that her deposit had not been lodged in full within 30 days of the start of the tenancy. She submitted that when visited by the Respondent’s wife after requesting the return of the deposit, she was told that the Respondent had retained the £700 as he was short of money but had thought that he would be able to pay it into the scheme over time and the Applicant would never know that it hadn’t been paid in the first place.
 5. In his written submissions, the Respondent admitted that he had failed to pay the full deposit into a scheme. He stated that it was agreed with the Applicant that when the £750 was paid to him, £50 would be paid into the scheme and the remaining £700 would be paid in when his financial situation improved. He stated that he understood this to be acceptable and that he did not realise that all of the funds had to be paid into the scheme within 30 days. This was his first time as a landlord and he did not understand the process. It should be noted that further statements were made regarding matters which are not relevant to the application at hand,

relating to repairs, access to the property and arguments between the parties. The Tribunal considered these issues to have no relevance to the question of the lodging of the deposit in a scheme and whether the Regulations had been breached.

- Findings in Fact

6. The Tribunal made the following findings in fact:

- (a) The parties entered into a private residential tenancy which commenced 1 May 2020;
- (b) The Applicant paid a deposit of £750 to the Respondent;
- (c) The Respondent lodged £50 into an approved tenancy deposit scheme;
- (d) The Respondent failed to lodge the full deposit of £750 into an approved tenancy deposit scheme under Regulation 3 of the 2011 Regulations;
- (e) The Respondent failed to provide the statutory information to the Applicant under Regulation 42 of the Regulations;
- (f) The Tenancy ended on 4 July 2021;
- (g) The Deposit has been returned in full to the Applicant.

- Findings in Law

7. The Tribunal made the following findings in law:

7.1 The Respondent was in breach of their duties under Regulation 3 of the 2011 Regulations, which states as follows:

3 (1) *A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—*

- (a) pay the deposit to the scheme administrator of an approved scheme; and*
- (b) provide the tenant with the information required under regulation 42.*

(2) *The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.*

(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—

(a) in respect of which the landlord is a relevant person; and

(b) by virtue of which a house is occupied by an unconnected person, unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.

(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.

7.2 The Respondent was in breach of their duties under Regulation 42 of the 2011 Regulations, which states as follows:

42.—(1) The landlord must provide the tenant with the information in paragraph (2) within the timescales specified in paragraph (3).

(2) The information is—

(a) confirmation of the amount of the tenancy deposit paid by the tenant and the date on which it was received by the landlord;

(b) the date on which the tenancy deposit was paid to the scheme administrator;

(c) the address of the property to which the tenancy deposit relates;

(d) a statement that the landlord is, or has applied to be, entered on the register maintained by the local authority under section 82 (registers) of the 2004 Act;

(e) the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid; and

(f) the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement.

(3) The information in paragraph (2) must be provided—

(a) where the tenancy deposit is paid in compliance with regulation 3(1), within the timescale set out in that regulation; or

(b) in any other case, within 30 working days of payment of the deposit to the tenancy deposit scheme.

7.3 The Tribunal must grant an order in terms of Regulation 10 which states as follows:

10. If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—

(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and

(b) may, as the sheriff considers appropriate in the circumstances of the application, order the landlord to—

(i) pay the tenancy deposit to an approved scheme; or

(ii) provide the tenant with the information required under regulation 42.

- Reasons for Decision

8. The Tribunal was satisfied that the Respondent was in breach of their duties under Regulations 3 and 42 as aforesaid. This was by the Respondent's own admission. The Respondent only paid £50 of the £750 deposit into a tenancy deposit scheme.
9. The 2011 Regulations were introduced to provide security for tenants in paying over deposits to landlords and to address an issue with some landlords taking tenancy deposits and then failing to pay them back where they were lawfully due at the end of the tenancy. The 2011 Regulations also provide that parties have access to an independent and impartial dispute resolution mechanism within a scheme to address any deposit deductions which require to be considered.
10. By his failure to lodge the entire deposit into an approved tenancy deposit scheme, 93% of the deposit was not protected for a period of 13 months. The Tribunal noted that the Respondent was aware of his obligation to lodge the deposit, given £50 of the deposit was indeed lodged. It was unclear as to the basis upon which the Respondent considered that he did not require to lodge the full deposit, but only part. The Respondent stated in his written submissions that he intended to lodge the remainder when his financial situation improved, and the Tribunal considered that to suggest that he would be utilising the tenant's funds for his own personal use for an unspecified period of time, was wholly inappropriate. The Respondent himself stated in his written submissions that he was a first-time landlord. There was no explanation from the Respondent as to what advice he sought at the time to satisfy himself of his obligations and duties as landlord. It appeared that he hadn't taken any advice at all. Such information is freely available online, and guidance can be obtained from the tenancy deposit scheme itself. The Tribunal was not satisfied that there was any good reason for the full deposit not having been properly lodged.

11. The Tribunal noted that the deposit had been returned to the Applicant in full, and with £700 of this having been returned prior to her vacating the property,

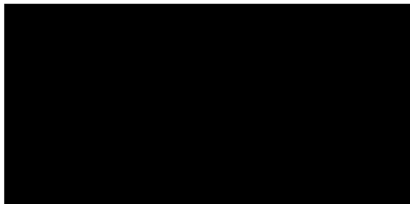
- Decision

12. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent(s) for payment to the Applicant in the undernoted sum:

SEVEN HUNDRED AND FIFTY POUNDS (£750) STERLING

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.



Legal Member/Chair

Date: 30 September 2021