



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

Chamber Ref: FTS/HPC/PR/21/2076

Re: Property at Flat 1, 1A Western Avenue, Falkirk, FK2 7HR (**"the Property"**)

Parties:

Catherine Cahill, formerly residing at Flat 1, 1A Western Avenue, Falkirk, FK2 7HR ("the applicant")

And

Alan Milliken, 2 Melville Street, Falkirk, FK1 1HZ ("the respondent")

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent has breached his obligations under regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Background

1. In September 2013 the respondent and his late business partner let to the applicant (and one other) the property at Flat 1, 1A Western Avenue, Falkirk, FK2 7HR. A Tenancy agreement was entered into which required payment of a deposit of £500. The tenancy ended on 21 September 2021.

The Case Management Discussion

2. A Case Management Discussion took place before the Tribunal by telephone conference at 11.30am on 17 November 2021. The Applicant was present and unrepresented. The respondent was neither present nor represented. The respondent has received notice of the hearing. He submitted written representations on 5 November 2021. I am satisfied that I can justly determine this case in the respondent's absence.

3. The applicant submitted an application against a limited company, of which the respondent is a director. The applicant seeks leave to amend the application so that it is properly directed against the respondent. In his written submission of 5 November 2021, the respondent accepts that he was the applicant's landlord. The application to amend the application is not opposed. The application is amended so that Alan Milliken is the respondent.

4. The respondent's position is that he and his business partner took a deposit of £500 from the applicant and her joint tenant when the tenancy started in 2013. The respondent says that his personal involvement with this tenancy started in January 2018 with his business partner passed away.

5. Both parties agree that the deposit was not lodged with an approved tenancy deposit scheme within 30 days of commencement of the tenancy. Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 tells me that, in light of that admitted fact, I must make a payment order against the respondent. I can dispose of this case today, without the need for a further hearing. I have the benefit of detailed written submissions from both parties.

Findings in Fact

6. In September 2013 the respondent and his business partner agreed to let the dwelling-house at Flat 1, 1A Western Avenue, Falkirk, FK2 7HR, to the applicant and one other. A tenancy agreement was entered into setting out the agreed rental and requiring a deposit of £500.

7. The Tenancy Deposit Schemes (Scotland) Regulations were introduced in Scotland on 7th March 2011. The Tenancy Deposit Schemes (Scotland) Regulations 2011 are retrospective. They apply to all tenancy deposits in Scotland, including those taken before the Regulations were introduced. The transfer of existing deposits was phased in after the launch of the schemes, but since 15th May 2013 all tenancy deposits in Scotland must be held in a tenancy deposit scheme.

8. The tenancy agreement signed by the applicant does not provide details of the tenancy deposit schemes nor the Tenancy Deposit Schemes (Scotland) Regulations.

9. Throughout the duration of the tenancy agreement. The applicant's rental was paid into the same bank account. At the end of the period of rental, the respondent provided the applicant with a reference which confirmed that she had maintained prompt and regular payments of the monthly rental.

10. Since at least January 2018, the respondent has accepted the responsibility of landlord under the tenancy agreement and has benefited from the payment of rental. The applicant's joint tenant removed from the property in 2019. No part of the deposit has been refunded to the applicant's former co-tenant.

11. The tenancy agreement signed by the applicant designs the applicant as

““lead tenant” for the purposes of the administration of the deposit in terms of the rules of the tenancy deposit scheme...”

The lease says that

“The lead tenant will be responsible for and administer the repayment process... and will receive payment of the deposit or part thereof from said scheme.”

11. On the day the applicant vacated the property and the tenancy came to an end, the respondent offered to immediately refund the £500 deposit to the applicant. The applicant did not respond to that offer because on 27 August 2021 the applicant submitted the current application to the Housing and Property Chamber.

12. The respondent lets at least one other residential property. He is also a director of a property investment and development company which deals with commercial property. When the lease was entered into in 2013, the respondent and his late business partner instructed letting agents act for them.

Reasons for Decision

13. It is beyond dispute that a deposit of £500 was paid at the commencement of the tenancy. On the facts as I find them to be, the deposit was not paid into an approved scheme when it should have been.

14. The respondent acknowledges his error. The respondent has no known history of breaching the 2011 Regulations. A full accounting for the deposit has been offered. Against those mitigating factors, I must balance the undisputed fact that the deposit was unprotected for the duration of the tenancy and that the respondent has accepted the role of landlord since at least January 2018. If the Respondent had simply read clause 12 of the lease, he would have known that a deposit had been paid.

15. The Applicant asked me to make a payment order. The purpose of the order is not to enrich the applicant. The purpose of the order is to punish the respondent; to mark society's displeasure; to protect society and to ensure the enforcement of the 2011 Regulations in the future.

16. The amount of deposit was £500.00. The applicant contributed one half of that sum. No part of the deposit has been repaid so that the tenant who moved out in 2019 has not yet been reimbursed. For eight years the deposit was not protected. A payment order equivalent to one and a half times the value of the deposit reflects the seriousness of the breach of the 2011 Regulations.

17. The appropriate level of payment order for breaching the Regulations is £750.00. In addition, the respondent should refund the original deposit to the applicant, so that the applicant is entitled to payment of £1,250.00.

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment to the Applicant of One Thousand Two Hundred and Fifty pounds (£1,250.00) (representing a payment order of 1.5 times the deposit together with a refund of the deposit) within 14 days of service of this order.

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.

P. D

Legal Member:

Date: 17th November 2021