



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/21/2080

Order granted on 17 November 2021

Re: Property at 3 Ulaw Steading, Ellon, Aberdeenshire (“the Property”)

Parties:

Lee Chuter, residing at 23 Homefarm place, Rothienorman, Inverurie, Aberdeenshire, AB51 8SA (“the applicant”)

And

Andrew Livingstone, residing at 2 Cross Stone Steading, Ellon, Aberdeenshire, AB41 8ND (“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 May 2020 the respondent let to the applicant (and one other) the property at 3 Ulaw Steading, Ellon, Aberdeenshire. A Tenancy agreement was entered into which required payment of a deposit of £500. The tenancy ended on 30 June 2021 when the parties entered into a new tenancy agreement, which ended on 12 August 2021.

The Case Management Discussion

2. A Case Management Discussion took place before the Tribunal by telephone conference at 2.00pm on 17 November 2021. Both parties were present. Neither party was represented. Both parties made written submissions in advance of the hearing.

3. The respondent's position is that he took a deposit of £1,000.00 from the applicant when the tenancy started. The respondent rents out 7 properties and maintains an account with MyDeposits Scotland. He was shocked when he found out that he had forgotten to pay the deposit into an approved scheme. He immediately told the applicant about his mistake, and made arrangements to secure the deposit.

4. 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

5. In May 2020 the respondent agreed to let the dwelling-house at 3 Ulaw Steading, Ellon, Aberdeenshire, to the applicant. A tenancy agreement was entered into setting out the agreed rental and requiring a deposit of £1,000.

6. 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.

7. The respondent has been a landlord for more than 20 years. He has seven residential properties which he rents out. His practice since 2012 has been to place deposits with MyDeposits Scotland. In May 2020, for the first time, he forgot to pay the deposit received from the applicant into an approved scheme.

8. On 13 May 2021 the applicant served a notice to leave on the respondent. It was then that they both looked for the deposit, only to find it had not been paid into an approved scheme. The respondent was horrified to discover his mistake, and told the applicant he would pay the deposit into an approved scheme immediately. On 18 May 2021, the applicant asked the respondent not to pay the deposit into an approved scheme as he would soon be leaving the property.

9. The applicant did not leave the property. After a little negotiation, the respondent offered the Applicant a new lease, which the applicant accepted on 8 June 2021. On that date, the respondent paid the deposit into an approved scheme.

10. The new lease between the parties ended on 12 August 2021.

11. The respondent made an honest mistake and has no intention of depriving the applicant of sums due to him or minimising the applicant's protections and rights.

Reasons for Decision

12. It is beyond dispute that a deposit of £1,000 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.

13. The respondent acknowledges his error and clearly regrets making an honest mistake. The respondent has been a landlord for more than two decades and has no 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.

14. 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.

15. The amount of deposit was £1,000.00. When the respondent's error was discovered the applicant trusted the respondent sufficiently to ask him not to lodge the deposit with an approved scheme (because he intended to leave the property in a matter of weeks).

16. There has clearly been a breach of the 2011 Regulations, but the breach was unintentional. The applicant suffered no detriment as a result of the breach.

17. A payment order for £250.00 serves the purposes set out in paragraph 15 above.

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment to the Applicant of Two Hundred and Fifty pounds (£250.00) 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. Doyle

Legal Member:

Date: 17th November 2021