



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”) and Rules 103 and 17 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/PR/21/2977

Re: Property at Rossmyre, 1 George Court, Halkirk, Caithness, KW12 6WB (“the Property”)

Parties:

Mrs Jessica Tilt, Heimdall, 46 Sinclair Street, Halkirk, Caithness, KW12 6XZ (“the Applicant”)

Ms Alison Gunn, Drumguish, Watten, Caithness, KW1 5XG (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for payment in the sum of ONE THOUSAND SIX HUNDRED AND FIFTY POUNDS (£1,650.00) Sterling be granted.

Background

1. By application received on 1 December 2021 (“the Application”), the Applicant applied to the Tribunal for an Order in terms of Regulation 10 of the Regulations. The Application comprised a copy of a tenancy agreement between the Parties indicating that any tenancy deposit would be lodged with an approved deposit scheme, copy note from the respondent giving bank details for payment of the deposit of £550.00 and copy correspondence from the approved deposit scheme providers indicating that the deposit had not been lodged with any of them. The Application was accepted by the Tribunal and a Case Management Discussion (the “CMD”) was fixed for 22 March 2022 at 14.00 which date was intimated to the Parties.
2. Both Parties submitted written representations.

Case Management Discussion

3. The CMD took place on for 22 March 2022 at 14.00 by telephone. Both Parties took part. Neither Party was represented.
4. The Applicant confirmed the detail of the Application and the sum sought. She advised that the deposit had been repaid to her.
5. The Respondent accepted that she had not lodged the deposit in an approved scheme nor had she advised the Applicant where the deposit was held, both as required by the Regulations. The Respondent accepted that the tenancy agreement made reference to the Regulations under explanation that she was unaware that the Regulations were a “must do” and that she thought the Regulations were an option. In respect of her personal circumstances, the Respondent stated that she was a generous landlord and had allowed the Applicant to move into the Property early and at no extr accost.

Findings in Fact

6. From the Application and the CMD, the Tribunal made the following findings in fact: -
 - i) There had been a tenancy of the Property between the Parties from October 2016 to September 2022;
 - ii) A tenancy deposit of £550.00 was paid on 27 September 2016;
 - iii) The tenancy deposit was not lodged with an approved scheme in terms of the Regulations;
 - iv) The Respondent did not provide the Applicant with the information required by the Regulations.

Decision and Reasons for Decision

7. The Tribunal had regard to the following Regulations: -

Regulation 3 which states:- “(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.” ;

Regulation 42 which states “(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; and

Regulation 10 which states *“If satisfied that the landlord did not comply with any duty in regulation 3 the Tribunal (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit”*

8. From the Findings in Facts, the Tribunal determined that the Respondent had breached both Regulations 3 and 42, in their entirety. Therefore, the Tribunal was bound to make an Order in terms of Regulation 10.
9. The Tribunal took the view that the tenancy deposit was not the Respondent's funds but was the Applicant's funds and, that as the Regulations are in place to protect the Applicant's funds, the Applicant was entitled to that full protection. She was entitled to know where her funds were held and how and when she could access those funds. The Tribunal took the view that the Respondent's failure to comply with the Regulations throughout the tenancy was well in excess of the statutory thirty-day time limit and so was at the extreme end of a breach of the Regulations. Accordingly, the Tribunal awarded the Applicant the full three times the deposit as requested by her.
10. Having made that decision, the Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal “may do anything at a case management discussionincluding making a decision” and so proceeded to make an order for payment in the sum of £1,650.00.

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.

K Moore

22nd March 2022

Legal Member/Chair

Date