

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/21/3050

Re: Property at 84 Dochfour Drive, Inverness, IV3 5ED ("the Property")

Parties:

Ms Juliska Paulovics, 6 Connage Crescent, Ardersier, Inverness, IV2 7AD ("the Applicant")

Mr Alexander James Shaw, Sky House, Upper Cullernie Farm, Balloch, Inverness ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member)

Decision

At the Case Management Discussion ("CMD") on 16 March 2022 which took place by telephone conference the Applicant was not in attendance but was represented by Ms Fiona Rodgers, Citizens Advice Bureau, Inverness. The Respondent was in attendance.

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that:-

Background

The following issues are not in dispute between the parties:-

- The Respondent is the heritable proprietor of the Property.
- The Respondent leased the Property to the Applicant in terms of a Tenancy Agreement dated 25 April 2016 ("the Tenancy Agreement").
- The Tenancy Agreement commenced on 1 May 2016.
- The Applicant, at the request of the Respondent, paid to the Respondent a deposit of £650. This payment was made on 1 May 2016.
- The Tenancy Agreement ended on or around 9 September 2022.

- The Respondent did not, at any point during the tenancy or subsequently, pay the deposit into an approved scheme as required in terms of Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Regulations").
- At the end of the Tenancy Agreement, the Respondent refunded to the Applicant £300 of the deposit and retained the balance of £350 in respect of a list of defects in the Property that he identified, all on or around 26 September 2022.

The Case Management Discussion

At the CMD the Respondent stated that he had previously submitted written representations to the Tribunal by post. During the CMD the Clerk and the Caseworker both attempted to trace these written representations without success. The Tribunal asked whether the Respondent could email the representations during the CMD. The Respondent said he could not use email and his daughter, who assisted him, was not available to do so. The Respondent was content to go through his representations orally and did so.

The Respondent having admitted a breach of the Regulations, the Applicant's representative had no further submissions to make to the Tribunal.

The Respondent made the following representations in his own right and in response to questions from the Tribunal:-

- i. That rent was not always paid by the Applicant on time and was occasionally a few days late.
- ii. That the Applicant kept the Property generally tidy but "was a pain" with text messages.
- iii. That at the end of the tenancy the Respondent tried to discuss with the Applicant the list of defects found in the Property but she stormed off to her car.
- iv. That prior to the Tenancy Agreement the Respondent had never held back any deposit monies from other tenants.
- v. That the Respondent is a semi-retired farmer and therefore does some farm work and otherwise looks after his various rented properties.
- vi. That the Respondent has around 20 rented properties in Inverness and Ross-shire, eight of which are farm houses or farm cottages.
- vii. That the Respondent has leased properties for many years, one property having been leased for 25 years and his most recent lease having been entered into in November 2020.
- viii. That the Respondent currently holds no deposits for any of his tenants. He previously held the three deposits for other tenants dating back to 2006. As a consequence of these proceedings, on 1 March 2022 he gave the deposits back to the tenants and will not take any further deposits. The Respondent stated that he chooses tenants carefully.
- ix. The Respondent does not employ or take advice from a letting agent but has always administered his let properties himself with the support of one employee and now his daughter in addition.
- x. That none of the Respondent's tenants have had rent increase during their tenancies.
- xi. That the Respondent was unaware of the Regulations at the time the Tenancy Agreement was entered into.

Reasons for Decision

The Tribunal takes a landlord's failure to comply with the Regulations very seriously.

In terms of Regulation 10 of the Regulations it is stated:-

"If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal -

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

Having admitted a breach of the Regulations the Tribunal is obliged to make an order against the Respondent.

In determining the amount payable by the Respondent to the Applicant the Tribunal took into account the following:-

- i. That the Respondent is a commercial landlord operating a substantial portfolio of rented properties over many years.
- ii. That in relation to those tenancies where deposits have been taken, by his own admission none have ever been lodged in an approved scheme as required in terms of the Regulations.
- iii. That the Applicant's deposit was unprotected for the entire duration of the tenancy being a period in excess of five years.
- iv. That the Applicant was deprived of the adjudication process operated by an approved scheme operating under the Regulations relative to the return of the deposit, £350 of which remains in the Respondent's hands.
- v. That the Respondent's lack of knowledge of the Regulations is extremely surprising in the circumstances and is inexcusable.
- vi. That the Respondent's failure to adhere to the terms of the Regulations sits at the most serious end of the scale of penalties available to the Tribunal in terms of the Regulations.

The Tribunal therefore determined that, having regard to the foregoing, the Respondent must pay to the Applicant a sum of £1,950 by way of a penalty for his failure to comply with the Regulations, being the maximum amount payable of three times the deposit.

Decision

The Respondent is ordered to pay to the applicant sum of £1,950.

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.

