



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under the Housing (Scotland) Act 2006 section 121 and Regulation 9 the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/21/3244

Re: Property at Middle Cottage, Moonzie Mill Works, Balmullo, St Andrews, KY13 0AH (“the Property”)

Parties:

Ms Yvonne Telfer, Culdee Cottage, Leslie Road, Scotlandwell, KY13 9JE (“the Applicant”)

Miss Karen Kelly, 15 Hathway Drive, Glasgow, East Renfrewshire, G46 7AE (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Landlord is in breach of her obligations in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“Regulation 3”). The Respondent shall make payment to the Applicant in the sum of £1700 (ONE THOUSAND SEVEN HUNDRED POUNDS) STERLING.

1. The Tribunal received an application from the Applicant in terms of Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Rules 2017 which was signed on 30th December 2021. The Application detailed that a deposit of £850 had been paid.
2. On 2nd February 2022, all parties were written to with the date for the Case Management Discussion (“CMD”) of 16th March 2022 at 10am by teleconferencing. The letter also requested all written representations be submitted by 23rd February 2022.



3. On 3rd February 2022 , sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent by leaving in the hands of her mother in her property. This was evidenced by Certificate of Intimation dated 4th February 2022.

The Case Management Discussion

4. A CMD was held 16th March 2022 by teleconferencing. The Applicant was present and represented herself. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules.
5. The Applicant stated that she disputed the contents of the letter sent by the Respondent to the Tribunal. The Applicant stated that the Respondent had her bank details and that the Property was left in an excellent condition. The Applicant had withdrawn a Rule 111 case requesting her deposit be returned as the Respondent has now returned it in full. The Applicant considers that this confirms that she left the Property in a good condition. These points raise credibility issues with the contents of the Respondent's email. The Tribunal noted these points. She knows the previous tenant who told her that their deposit was also not lodged in an approved scheme though the Applicant did not have evidence from the previous tenant to support this point.
6. The Tribunal considered that the deposit had not been lodged with any tenancy deposit scheme at any point. It is a breach of the regulations. The Tribunal can issue a penalty of up to 3 times the amount of the deposit. The Tribunal took into consideration that the Respondent had offered mitigating circumstances for not lodging the deposit albeit the contents of the email were disputed by the Applicant. The Tribunal considered a penalty of two times the deposit was appropriate, as opposed to a three times penalty, given that the Respondent had emailed with mitigating circumstances but had failed to explain what steps had been taken to prevent this occurring again.

Findings and reason for decision

7. A Private Rented Tenancy Agreement commenced 27th January 2021.
8. A deposit of £850 was paid to the Respondent.
9. The deposit was not lodged any in a tenancy deposit scheme. This is a breach of the regulations.
10. The Respondent has failed to comply with the regulations to ensure that the deposit was lodged in an appropriate scheme within 30 days from the start of



the tenancy. The Respondent has not engaged with the Tribunal process to advise what steps have been taken to ensure that it will not happen again.

Decision

11. The Respondent has a duty under Regulation 3 to place the deposit in an approved scheme within the specified time but failed to do so. The Respondent did not engage with the Tribunal process to explain what steps had been taken to prevent such a situation happening again. The Tribunal decided that a fair, just and proportionate sanction would be to order the Respondent to pay the Applicant two times the amount of the deposit (£1700.00).

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.

G. M

16th March 2022

Legal Member/Chair

Date