

Housing and Property Chamber
First-tier Tribunal for Scotland



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/22/0111

Re: Property at 1/2 43 Lyon Street, Dundee, Angus, DD4 6RA (“the Property”)

Parties:

Mr Nathan Gaffney, 9 Kings Glen Place, Greenock, Inverclyde, PA15 3AU (“the Applicant”)

Barry Dunlop, 110 Commercial Street, Dundee, Angus, DD1 2AJ (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member)

Decision (in absence of the Applicant)

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 TWO HUNDRED POUNDS (£200) STIRLING

Decision (in absence of the Respondent)

Background

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 dated 13th February 2022. The Application included a lease which detailed that a deposit of £445 had been paid.
2. The Applicant advised in the application that the tenancy had commenced on 10th September 2021. The tenancy is a Private Rented Tenancy. The Respondent did not place the deposit in any scheme.

3. On 21st February 2022, all parties were written to with the date for the Case Management Discussion ("CMD") of 6th April 2022 at 10am by teleconferencing. The letter also requested all written representations be submitted by 14th March 2022.
4. On 22nd February 2022, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent at the address of his letting agent by leaving in the hands of Shona Milne, Receptionist. This was evidenced by Certificate of Intimation dated 22nd February 2022.
5. On 5th April 2022, Ms Laura Weir emailed the Housing and Property Chamber to advise that she was the Respondent's representative. The email included mandated authority.

The Case Management Discussion

6. A CMD was held on 6th April 2022 at 10am by teleconferencing. The Respondent was not present but was represented by Ms Laura Weir, Operations Director, Direct Lettings. The Applicant was not present and not represented. The Tribunal proceeded in terms of Rule 29 of the Rules.
7. Ms Weir had emailed the Housing and Property Chamber on 16th March 2022 stating that the error with the deposit not being lodged within the specified period lay with Direct Lettings due to an administration error. This remained her position.
8. Ms Weir told the Tribunal that a new software system had been implemented. The deposits were to be crossed over onto another ledger to allow them to be lodged with Safe Deposit Scotland. This had not happened and the deposit had remained in Direct Lettings own ring fenced tenant bank account. The member of staff dealing with this deposit had started in July 2021 and left in November 2021. When that member of staff had left Ms Weir had found that the deposit had not been lodged. She personally lodged it with Safe Deposit Scotland. This was done on 23rd November 2021. The system has been looked at. It no longer requires there to be a cross referencing and the deposit can be lodged straight away. Direct Lettings contacted Safe Deposit Scotland for any advice on their systems. Safe Deposit Scotland is to provide training and assistance with Direct Lettings on 4th May 2022. This was the first time available. Ms Weir is not aware of any other deposits being lodged late.
9. The Tribunal was satisfied that there had been a breach of the regulations but that new procedures had been put in place to the extent that Safe Deposit Scotland were to attend for training and advice. While the deposit was late it was lodged as soon as the error was noticed. The error was due to an administrative error, the procedure has now changed.
10. The Applicant has provided no evidence, either written or oral, to contradict the evidence of the Respondent other than that in the application.

Findings and reason for decision

11. A Private Rented Tenancy Agreement commenced 10th September 2021. A deposit of £445 was paid on that date.
12. The deposit was lodged with Safe Deposit Scotland on 23rd November 2021 which is outwith 30 days from the start of the tenancy. This is a breach of the regulations.
13. 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's letting agent has acknowledged that the deposit was not placed in a deposit scheme within the specified period due to an error on their part. They have since changed their systems, involved Safe Deposit Scotland for training and advice and lodged the deposit in the deposit scheme. This has all been done to reduce the possibility of this occurring again. The money remained in a ring fenced tenant account until it was lodged in the deposit scheme.

Decision

14. 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's Letting Agent failed to do so. It remains, however, the legal responsibility for the Respondent to ensure that the deposit has been lodged. However, the Respondent's letting agent has taken various steps to ensure that this does not occur again. The Tribunal decided that a fair, just and proportionate sanction would be to order the Respondent to pay the Applicant £200.

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 Miller

6th April 2022

Legal Member/Chair

Date