



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under the Tenancy Deposit Schemes
(Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/22/0158

Re: Property at 10 Burns Street, Tarbolton, Mauchline, KA5 5RA (“the Property”)

Parties:

Miss Crystale Colclough, 10 Burns Street, Tarbolton, Mauchline, KA5 5RA (“the Applicant”)

Mrs Dawn McArthur, Mr Graeme McArthur, 87 Fail Avenue, Tarbolton, Mauchline, KA5 5RA (“the Respondents”)

Tribunal Members:

Richard Mill (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the respondents must pay the applicant the sum of nine hundred pounds (£900)

Introduction

This is an application under Rule 103 and Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Service of the application and intimation of the Case Management Discussion (CMD) was effected upon the respondents by Sheriff Officers on 1 March 2022.

The CMD took place by teleconference on 19 April 2022 at 10.00 am. The parties all joined the hearing and represented their own interests.

Findings and Reasons

The property is 10 Burns Street, Tarbolton, Mauchline KA5 5RA.

A tenancy agreement in respect of the property commenced on 13 August 2021. A written agreement was entered into which was entitled "Short Assured Tenancy Agreement". This purported to be a tenancy within the meaning of Section 32 of the Housing (Scotland) Act 1988. This was not lawful. Short assured tenancies could not be created from 1 December 2017.

The tenancy agreement meets all of the statutory requirements under the Private Residential (Tenancies) (Scotland) Act 2016 and the lease arrangement between the parties was a private residential tenancy under that Act.

The applicant is Ms Crystale Colclough. She is the former tenant. She provided Notice to Leave and vacated the tenancy in February 2022. The respondents are Mrs Dawn McArthur and Mr Graeme McArthur who are the named landlords on the tenancy agreement. The property is owned solely by Mrs Dawn McArthur.

In terms of the written lease, the monthly rent was stipulated at £450 per month. A deposit was paid by the applicant to the respondents in the sum of £450.

The applicant terminated the tenancy and vacated on or about 14 February 2022. The original deposit paid in the sum of £450 has been forfeited by the respondents. They have retained the deposit due to damage to the external door of the property. The applicant disputes responsibility for this but has taken no steps to recover the deposit.

The applicant must satisfy the Tribunal by the production of sufficient documentary evidence that the deposit is not held by any one of the three Tenancy Deposit Schemes operating in Scotland which are SafeDeposits Scotland, Mydeposits Scotland or Letting Protection Service Scotland. The applicant has relied upon and produced written documentation from the three schemes. E mail confirmation from each scheme confirms that the deposit was not paid to them. The Tribunal relied upon this credible and reliable documentary evidence.

Moreover the respondents have been candid in accepting that they did not adhere to the regulations and failed in their duties to pay the deposit into an approved scheme as required. They stated that the issue was an oversight and also provided other explanations regarding factual circumstances which had an impact upon their actions but none of these factors can excuse the respondents to adhere to their obligations.

The Tribunal was satisfied that the landlords have not complied with the requirements of the 2011 Regulations and in particular did not lodge the deposit paid into an approved scheme. The duties of landlords are contained within Regulation 3. This requires the landlord who has received the tenancy deposit in connection with the relevant tenancy to pay the deposit to a relevant scheme administrator from an approved scheme within 30 working days of the beginning of the tenancy. The respondents failed to do this.

The Tribunal was satisfied that the respondents failed to comply with the duty in Regulation 3. Regulation 10 requires the Tribunal to make an Order against the

respondents to pay to the applicant an amount not exceeding three times the amount of the tenancy deposit.

The Tribunal considered all relevant circumstances prior to making any Order under Regulation 10. The respondents are operating as a commercial letting agent and yet appears to have little experience or knowledge of residential lettings given that an attempt was made to enter into short assured tenancy over 2 years after such tenancies were no longer valid. The Tribunal is satisfied having regard to the entirety of the documentary and oral evidence that the respondents have failed to act diligently and professionally and failed to account to the applicant in a proper manner. The applicant, who challenges the retention of her deposit, has been disadvantaged by the respondents failure to pay the deposit into a scheme as required.

In all the circumstances, the Tribunal ordered that the respondents pay to the applicant the sum of twice the amount of the tenancy deposit ie a total of £900. This is fair and proportionate in all of the circumstances. The public require to have confidence that residential landlords are operating fairly and that their deposits are secured in accordance with the law in force in Scotland.

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.

Richard Mill

Legal Member/Chair

19 April 2022

Date