



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

Chamber Ref: FTS/HPC/PR/22/3218

Re: Property at 19 Corrou Road, Aviemore, PH22 1SS (“the Property”)

Parties:

Ms Cherie McGibbon, 26 Cairnview Road, Aviemore, PH22 1AG (“the Applicant”)

Mr Matthew Bown, 19 Corrou Road, Aviemore, PH22 1SS (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted in favour of the Applicant in the sum of £1,500.

Background

- 1) The Applicants lodged an application dated 29th August 2022 and submitted on 5th September under Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Rules”), applying for an order in terms of Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”).
- 2) The Applicants lodged a copy of the tenancy agreement, copy e-mails confirming the payment of the deposit and the end of the tenancy as well as other e-mails between the parties.
- 3) By email dated 24th November 2022, the Respondent lodged written representations and copy e-mails and photographs of the condition of the Property.

The Case Management Discussion

- 4) The Case Management Discussion (“CMD”) took place by telephone conference on 7th December 2022 as intimated to both parties. The Applicants, attended along with her representative Ms Fiona Rogers. The Respondent was also in attendance but not represented.
- 5) The Applicant’s representative advised that as per the tenancy agreement and the application the Applicant rented the Property from the Respondent from 6th April 2020 until 30th June 2022, and had paid a deposit of £750 at the outset. Ms Rogers advised that the disagreement arose when the Applicant realised there was no adjudication on the return of the deposit and confirmed the Applicant was seeking up to 3 times the amount of the deposit as a penalty.
- 6) The Respondent confirmed as per his written submissions that he just had not been aware of the Regulations and requirements to lodge a deposit when he entered into the lease. He agreed that the lease started on 6th April 2020 and advised that he had just separated from his partner and had to move out of the family home. He advised he had wanted to sell the Property but Covid made that very difficult and so when he heard the applicant was looking for somewhere to stay he decided to rent it out given her somewhere to stay and receive an income in uncertain times. He advised he was an inexperienced landlord and had to look up information on it including how to register as a landlord and what lease to use. He confirmed he did not deliberately fail to lodge the deposit and admitted that although there is a clause in the lease dealing with deposits he did not read it. The Respondent indicated he was very disappointed with the condition of the Property when the tenant left and he indicated in his submissions that the cost to rectify it could run to thousands.

Findings in Fact and Law

- 7) The parties entered into a tenancy agreement whereby the Applicants were the tenants in the Property rented from the Respondents who were the landlords, and that the tenancy commenced on 6th April 2020 and ended on 30th June 2022.
- 8) A tenancy deposit of £750 was paid to the Respondent by the Applicants at the commencement of the tenancy.
- 9) The deposit was not lodged with an approved tenancy deposit scheme and remained unprotected throughout the duration of the tenancy.
- 10) The Respondent has breached Regulation 3 by failing to pay the deposit into an approved tenancy deposit scheme timeously.
- 11) The Respondent has admitted that he did not lodge the deposit.
- 12) The Deposit of £750 has been retained by the Respondent.
- 13) The Application is timeous.

Reasons for Decision

- 14) The fact that the Applicants’ deposit was not lodged with an approved tenancy deposit scheme as required by Regulation 3 is admitted by the Respondent who submitted written representations confirming this and

explaining he was an inexperienced landlord who was forced into renting out the Property during a difficult financial time. The deposit remained unprotected throughout the duration of the tenancy, which was just over 2 years. This deprived both parties of the opportunity of dispute resolution through an approved tenancy deposit scheme at the end of the tenancy and the Applicant has not had the deposit paid back because the Respondent has decided he is entitled to keep it due to alleged damage to the Property by the Applicant.

- 15)** The Regulations were put in place to ensure compliance with the tenancy deposit scheme, and to provide the benefit of dispute resolution for parties. When a breach of the Regulation has taken place the Tribunal must make an award. The Tribunal considers that its discretion in making an award requires to be exercised in the manner set out in the case *Jenson v Fappiano* (Sheriff Court (Lothian and Borders) (Edinburgh) 28 January 2015) by ensuring that it is fair and just, proportionate and informed by taking into account the particular circumstances of the case. The Tribunal must consider the facts of each case appropriately.
- 16)** The Tribunal considered this to be a serious matter, although not one at the most serious end of the scale. The Respondent advised he was inexperienced and unaware of the Regulations, however he should have been aware of the Regulations which have been in place for a number of years. The tenancy agreement itself which he admitted to finding on a website when seeking information regarding being a landlord, sets out the obligations and clause 10 records the deposit is £750 which is an amount that has to be inserted into the style lease. The Respondent advised that despite this he had not read the lease. All Landlords are required to satisfy themselves as to their obligations which are set out for the protection of their tenant and the Property. Lack of experience or knowledge means the failure may not be deliberate but it is reckless that the Respondent did not read the tenancy agreement he was completing and signing or make more enquiries to ensure that he knew what he was expected and required to do as a responsible landlord.
- 17)** The Applicant was entitled to have confidence that the Respondent would comply with his duties as a landlord and that her tenancy deposit would be protected. Her deposit has not been returned because the Respondent has decided there are damages and costs incurred from her occupation as tenant and he has therefore decided to keep it. The Tribunal has taken into account that the Respondent has admitted liability in not lodging the deposit, that this was his first time as a landlord and that he has now sold the Property and so is not currently letting out any property. The Tribunal has also taken into account the deposit was unprotected for 2 years. The Tribunal notes he was inexperienced but tenants are entitled to protection and the rules regarding tenancy deposits can be easily found as the Respondent discovered when he looked for it. The Tribunal also notes and has taken into account that he did not consider putting it into a scheme even when he realised he had omitted to do so and the Applicant has therefore been deprived of any recourse to independent adjudication and the deposit has not been returned. The Respondent submitted that the damage to the property should be taken into account but any alleged issues with the condition of the Property at the end of

the tenancy are not relevant to this application and have therefore not been taken into account.

- 18)** Taking all the circumstances into account, the Tribunal decided it would be fair and just to award a sum of £1,500 to the Applicants, which is two times the tenancy deposit.

Decision

The Tribunal grants an order against the Respondent for payment to the Applicants of the sum of £1,500.

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.

Jan A Todd

7th December 2022

Legal Member/Chair

Date