



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

Chamber Ref: FTS/HPC/PR/20/2060

Re: Property at 1 Mary Croft, Rafford, Forres, IV36 2WD (“the Property”)

Parties:

Ms Christine De Agostini, 5 Russell Place, Forres, IV36 1BL (“the Applicant”)

Mrs Ann Gavin, 7 Mary Croft, Rafford, Forres, IV36 2WD (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the Respondent to the Applicant in the sum of £375.00.

Background

1. By application dated 24 September 2020 the Applicant applied to the Tribunal for an order under the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The Applicant submitted a copy of a tenancy agreement and supporting documents.
2. By Notice of Acceptance dated 25 November 2020 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned.
3. By email dated 6 December 2020 the Respondent’s representative Mr Ron Gavin submitted written representations to the Tribunal.
4. By email dated 18 December 2020 the Applicant submitted further written representations.

The Case Management Discussion

5. A Case Management Discussion was held by teleconference on 7 January 2021. The Applicant attended personally. The Respondent was represented by her husband Mr Ron Gavin.
6. The parties confirmed that the tenancy commenced on 5 November 2015 at a rent of £850.00 per month including Council Tax and that the deposit paid by the Applicant was also £850.00.
7. Mr Gavin confirmed that he had only paid £700.00 of the deposit to the scheme administrators Safe Deposit Scotland. He said he had advised the Applicant of the amount deposited and that Safe Deposit Scotland would also have sent an email to the Applicant confirming the amount. Mr Gavin said it had been a mistake on his part as the property had been advertised at a rent of £700.00 per month but it had been subsequently agreed to include payment of the Applicant's Council Tax and increased to £850.00.
8. The Applicant said she thought that all of the deposit had been lodged but had not signed anything to confirm that as she had when she moved into her new property.
9. Mr Gavin said that there had been some discussion with the Applicant over the previous two or three years as the Applicant had queried how much the deposit was. Mr Gavin said that because he had been sure he was correct he had not at that time gone back to check his records.
10. The Applicant accepted that £700.00 of her deposit had been protected throughout the tenancy which had ended on 25 June 2020. She also accepted that the Tribunal could only consider the issues before it relating to a breach of Regulation 3 of the 2011 Regulations and not any other issues that she may have had with the Respondent in connection with the tenancy. She explained that it had taken a long time to get her deposit back from Safe Deposit Scotland.
11. Mr Gavin confirmed that the Respondent did not rent out any other properties and that she was no longer a registered landlord, the property having been sold following the Applicant vacating the property. He accepted that due to his error £150.00 of the Applicant's deposit had been unprotected throughout the whole period of the tenancy a period of four and a half years. He also accepted that the application had been made timeously. Mr Gavin confirmed that the balance of the Applicant's deposit had still been retained.

Findings in Fact

12. The parties entered into a tenancy agreement that commenced on 5 November 2015 at a rent of £850.00 per calendar month.
13. The Respondent was paid a deposit of £850.00 at the commencement of the tenancy.

14. £700.00 of the deposit was paid to Safe Deposit Scotland.
15. The balance of £150.00 of the deposit was retained by the Respondent for the duration of the tenancy.
16. The Respondent was made aware of the shortfall in the amount lodged at some point during the tenancy by the Applicant but took no steps to investigate.
17. The property was sold following the Applicant vacating the property.
18. The Respondent has no other rented properties and is no longer a registered landlord.
19. The Respondent has retained the balance of the Applicant's deposit.

Reasons for Decision

20. The Tribunal was satisfied it had sufficient information before it to enable it to make a decision. It was agreed that the deposit paid was £850.00 and that only £750.00 had been lodged with Safe Deposit Scotland. Accordingly, £150.00 of the Applicant's deposit had been unprotected for the duration of the tenancy.
21. As part of the deposit had not been lodged by the Respondent in accordance with Regulation 3 of the 2011 Regulations the Tribunal was satisfied that the Respondent was in breach of that regulation.
22. The Tribunal was also satisfied that the Applicant had submitted her application to the Tribunal within the time limit prescribed in Regulation 9. Accordingly, the Tribunal was obliged to impose a sanction upon the Respondent in terms of Regulation 10.
23. Where a landlord is in breach of Regulation 3 of the 2011 Regulations and a tenant makes an application to the Tribunal in terms of regulation 9 then in terms of Regulation 10 the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the deposit.
24. Any award under Regulation 10 requires to reflect a sanction which is fair and proportionate and just given the circumstances (*Jensen v Fappiano* 2015 GWD 4-89). In *Tenzin v Russell* 2015 Hous. L.R. 11 it was held that any payment in terms of Regulation 10 is the subject of judicial discretion after careful consideration of all the circumstances of the case.
25. In reaching its decision the Tribunal has carefully considered the written and oral submission of all the parties. The Tribunal accepted that the failure to lodge all of the deposit came about as a result of the rent being increased to include the Applicant's council tax and the Respondent's husband who was responsible for administering the tenancy forgetting that the deposit had also been

increased to £850.00. There had not been a wilful disregard of the regulations. The Tribunal also accepted that the Respondent and her husband were not professional landlords and only rented out the one property which had now been sold. Nevertheless, the Respondent's husband had been made aware of there being an issue with the deposit at least two years before the end of the tenancy but did not check his records and the £150.00 remained unprotected for the whole duration of the tenancy. The Tribunal also noted that the Respondent had still retained the balance of the Applicant's deposit. The Tribunal considered that any sanction should reflect the element of the deposit that had been unprotected and taking everything into account considered that an award of £375.00 was appropriate in the circumstances.

Decision

26. The Tribunal finds the Applicant entitled to an order for payment by the Respondent in the sum of £375.00.

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.

Graham Harding

Graham Harding
Legal Member

7 January 2021
Date