



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/21/3174

Re: Property at 10B Lawton Terrace, Dundee, DD3 6ET (“the Property”)

Parties:

Mr Charles MacInnes, 6 Thurso Gardens, Dundee, DD2 4BA (“the Applicant”)

Mrs Isabella Wood, The Hollies, Hatton Road, Perth, PH2 7DB (“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 £1000 (ONE THOUSAND POUNDS) STIRLING.

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 20th December 2021. The Application included a lease which detailed that a deposit of £500 had been paid.
2. On 2nd February 2022, all parties were written to with the date for the Case Management Discussion (“CMD”) of 15th 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 letterbox service and by post. This was evidenced by Certificate of Intimation dated 3rd February 2022.

The Case Management Discussion

4. A CMD was held 15th March 2022 by teleconferencing. The Applicant was represented by Ms Fiona MacInnes his appointed representative and daughter. The Applicant was not present. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent did not make representations in advance of the hearing.
5. Ms MacInnes noted that the Applicant had only had dealings with the letting agent. The Tribunal noted this but the lodging of a deposit in an approved scheme is the legal responsibility of the Respondent. It is the Respondent who is required to pay the penalty.
6. The Tribunal considered the lateness of the deposit being lodged. It is a breach of the regulations. The Respondent has not engaged in the Tribunal process or advised why the deposit was late. The Tribunal can issue a penalty of up to 3 times the amount of the deposit. The Tribunal took into consideration that the deposit was lodged into the deposit scheme 29 days late. The Tribunal considered a penalty of two times the deposit was appropriate, as opposed to a three times penalty, given that the deposit was paid shortly after the last date permitted by the regulations.

Findings and reason for decision

7. A Private Rented Tenancy Agreement commenced 31st August 2021.
8. A deposit of £500 was paid on 11th August 2021.
9. The deposit was lodged with Safe Deposit Scotland on 1st November 2021 which is outwith 30 days from the start of the tenancy. 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 why this has happened and 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 why the deposit was late and 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 (£1000.00).

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 Miller

15th March 2022

Legal Member/Chair

Date