



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 3 &10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/22/1424

Re: Property at 16 Orangefield Drive, Prestwick, South Ayrshire, KA9 1HG (“the Property”)

Parties:

Mr Chris Johnston, 4 Pardovan Crescent, Philpstoun, West Lothian, EH49 6RG (“the Applicant”)

Mr Peter Kevin known as Kevin Shields,formerly c/o 3 Alderston Avenue,KA8 9BD current address Unknown, Unknown(“the Respondent”)

Tribunal Members:

Susan Christie (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order be granted against the Respondent for payment of One Thousand Eight Hundred Pounds (£1800) to the Applicant.

Background

1. The Applicant applied for an Order for an award following on from a failure to lodge a deposit in an approved scheme timeously in line with regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011. The application was accepted by the tribunal on 18 May 2022.
2. Sheriff Officer’s attempted unsuccessfully to serve the paperwork on the Respondent at his given care of address of 3 Alderston Avenue, KA8 9BD.
3. A Certificate of Service by Advertisement is dated 27 July 2022 for an advertisement from 27 June 2022.
4. Mr Johnston participated in the Case Management Discussion (CMD) on 27 July 2022 at 10am. The Respondent did not participate.
5. I proceeded with the CMD, the procedure having been fair and service having been carried out by Advertisement as detailed in the Certificate of Service by Advertisement given to me. I also noted that Sheriff Officer’s attempted

unsuccessfully to serve the paperwork on the Respondent at his given care of address of 3 Alderston Avenue, KA8 9BD. It was reported to the tribunal that Sheriff Officer's had been given a telephone number for the Respondent by an occupier at the block and that the officer had spoken to Mr Shields who confirmed that he lived in Denmark but declined to give an address. A copy of the tribunal letter had been sent to him by text message. The Applicant had no address for the Respondent.

6. The detail of the application was discussed with the Applicant along with the paperwork produced.
7. The Applicant sought an order.

Findings in Fact

- I. A private residential tenancy between the Parties over the Property commenced on 23 May 2018, which was also the date of entry.
- II. A deposit for the tenancy was paid of £600 into a private bank account nominated by the Respondent, around 20 April 2018.
- III. The Applicant's tenancy deposit was not paid into a tenancy deposit approved scheme.
- IV. The tenancy deposit was unprotected for the duration of the tenancy.
- V. The tenancy ended on 22 February 2022.
- VI. The tenancy deposit sum of £600 was never returned to the Applicant.
- VII. The Respondent as the landlord did not comply with Regulation 3 of the Regulations and is in breach of the Regulations.
- VIII. The Respondent is required to pay the Applicant a sum of money and the Tribunal must make an Order to that effect by virtue of regulation 10.
- IX. An order is made for the Respondent to pay the Applicant the sum of £1,800.

Reasons for Decision

The extract of the regulations relied upon are noted below. The Regulations came into force on 7 March 2011.

The Application is well founded. A deposit was clearly paid at the outset of the tenancy and not deposited in an approved scheme. Page 12 of the tenancy agreement which is headed 'Short Assured Tenancy Agreement' acknowledges in writing that that the deposit of £600 was paid into a specific numbered account on 20 April 2018 by the Applicant and says, 'this will be kept in a secure account.' There is no mention of the Tenancy Deposit Schemes (Scotland) Regulations 2011 or an approved scheme in the tenancy agreement.

The Applicant stated that he became aware near to the end of the tenancy that the Respondent did not appear to be a registered landlord for the Property. He had checked the Landlord Registration website and there was no information for the Property. He had spoken to the local authority. They said there was little they could do at that point. The Respondent had intimated to the Applicant that he intended to sell the Property. The Applicant had called around the approved tenancy deposit scheme providers and none held his deposit. When he had moved out, he sought his deposit back from the Respondent. The communication between them was mostly by WhatsApp. The Respondent said he would look at the Property and if it was okay, he would return the deposit. He then said that some plant pots in the garden had

rotted and there was a mark where cooking oil had seeped onto a shelf in the kitchen. The Applicant did not accept responsibility for those items and other minor points raised by the Respondent. In particular, he stated that the cooking oil bottle had been in the cupboard when he took entry and he had tried to remove the stain. The Respondent did not engage further, did not return any of the deposit to the Applicant and blocked the Applicant from social media channels. The Applicant was unable to contact him on either of the two Danish numbers he had for him.

The purpose of Regulation 10 is to impose a *sanction* on the landlord for the failure and non-compliance with the statutory scheme. The deposit was exposed to risk whilst it remained the Respondent's nominated account. It was never paid into an approved scheme and was never returned to the Applicant in full or in part. The Applicant was unable to utilise the tenancy deposit protections as the deposit was never placed in an approved scheme.

I make an order for the Respondent pay to the Applicant £1,800. I considered that this is an appropriate amount, exercising my discretion. It is the maximum sum allowed. There did not seem to me to be any mitigating factors favourable to the Respondent. I considered the sum specified to be appropriate given the information before me.

Extract from the Regulations

3.—

(1) *A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—*

- (a) *pay the deposit to the scheme administrator of an approved scheme; and*
- (b) *provide the tenant with the information required under regulation 42.*

[

(1A) *Paragraph (1) does not apply—*

- (a) *where the tenancy comes to an end by virtue of section 48 or 50 of the Private Housing (Tenancies) (Scotland) Act 2016, and*
- (b) *the full amount of the tenancy deposit received by the landlord is returned to the tenant by the landlord,*
within 30 working days of the beginning of the tenancy.

]1

(2) *The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.*

[

(2A) *Where the landlord and the tenant agree that the tenancy deposit is to be paid in instalments, paragraphs (1) and (2) apply as if—*

- (a) *the references to deposit were to each instalment of the deposit, and*
- (b) *the reference to the beginning of the tenancy were to the date when any instalment of the deposit is received by the landlord.*

]2

(3) *A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—*

- (a) *in respect of which the landlord is a relevant person; and*
- (b) *by virtue of which a house is occupied by an unconnected person, unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.*

(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.

9.—

(1) A tenant who has paid a tenancy deposit may apply to the [First-tier Tribunal]1 for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.

(2) An application under paragraph (1) must be made [...]2 no later than 3 months after the tenancy has ended.

10.-

If satisfied that the landlord did not comply with any duty in regulation 3 the [First-tier Tribunal]1 —

(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and

(b) may, as the [First-tier Tribunal]1 considers appropriate in the circumstances of the application, order the landlord to—

(i) pay the tenancy deposit to an approved scheme; or

(ii) provide the tenant with the information required under regulation 42.

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.

Susan Christie

Legal Member/Chair

27 July 2022

Date