



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/22/1191

Re: Property at 20 Summerfield place, Inverallochy, Fraserburgh, Aberdeenshire, AB43 8WD (“the Property”)

Parties:

Miss Ashleigh Buchan, Mr Barry James Fisher, 20 Mid Street, Cairnbulg, Fraserburgh, Aberdeenshire, AB43 8WJ (“the Applicants”)

Mr John Sim, 10 Frederick Street, Inverallochy, Fraserburgh, Aberdeenshire, AB43 8XU (“the Respondent”)

Tribunal Member:

Ms H Forbes (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 Applicants in the sum of £650.

Background

1. By application received on 25th April 2022 and made under Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Rules”), the Applicants applied for an order in terms of Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”). The Applicants lodged a copy of the tenancy agreement between the parties that commenced on 11th July 2018, evidence of payment of a tenancy deposit in the sum of £650 on 11th July 2018, email correspondence, and information from the three approved tenancy deposit schemes.
2. By email dated 8th June 2022, the Respondent lodged written representations and information in relation to charges made against the Applicants for repairs that were required at the end of the tenancy.

The Case Management Discussion

3. A Case Management Discussion (“CMD”) took place by telephone conference on 12th July 2022. The Applicant, Ms Buchan, was in attendance. The Respondent was in attendance.
4. The Applicant said she had made enquiries of the Respondent as to the whereabouts of the deposit at the end of the tenancy, when he had asked the Applicants to leave without any written notice. At that stage, the Respondent had said he did not know if his solicitor had lodged the deposit, which was contrary to the information in his written representations.
5. The Respondent accepted he had failed to lodge the deposit. He buys properties to renovate for sale, and only usually lets to friends and family, with the exception of a let to two tenants around the time the Regulations came into force. He had lodged the tenancy deposit on that occasion. On this occasion, he had banked the deposit and forgotten about it until the following year, when he thought it was too late to deposit it, at which time the Applicants were talking about building their own property and moving out. He said he did not realise the Regulations were so strict.
6. The Respondent was aggrieved that the Applicants had taken this action against him, particularly as he had not charged them the full cost of repairs and gardening works that were required at the end of the tenancy, and there had been £300 in rent arrears. He had returned £263.86 of the deposit to the Applicants after deducting some repair costs. He had not made anything from the let of the Property and it had cost him over £5000 in repairs. The case had caused stress to him and his family. It was his position that he had made a genuine mistake. He was keen to bring matters to an end.
7. Parties were invited to make representations on the award to be made by the Tribunal. Both parties indicated they were content to leave the sum to the discretion of the Tribunal.

Findings in Fact and Law

8.
 - (i) The parties entered into a tenancy agreement in respect of the Property that commenced on 11th July 2018 and ended on 11th April 2022.
 - (ii) A tenancy deposit of £650 was paid to the Respondent by the Applicants at the commencement of the tenancy.
 - (iii) The deposit was not lodged with an approved tenancy deposit scheme and remained unprotected throughout the duration of the tenancy.
 - (iv) The Respondent has breached Regulation 3 by failing to pay the deposit into an approved tenancy deposit scheme timeously.

Reasons for Decision

9. The Applicants' deposit was not lodged with an approved tenancy deposit scheme as required by Regulation 3. The deposit remained unprotected throughout the duration of the tenancy, which was three years and nine months. This deprived both parties of the opportunity of dispute resolution through an approved tenancy deposit scheme at the end of the tenancy.
10. The Regulations were put in place to ensure compliance with the tenancy deposit scheme, and to provide the benefit of dispute resolution for parties. 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.
11. The Tribunal took guidance from the decision of the Upper Tribunal UTS/AP/19/0020 which states: '*Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals.*'
12. The Tribunal considered this to be a serious matter, although not one at the most serious end of the scale. The Respondent was aware of the Regulations. He had previously lodged a tenancy deposit in accordance with the Regulations. He put in place a formal tenancy agreement that stated that the deposit would be lodged timeously with a named approved tenancy deposit scheme. He failed to take any steps to ascertain whether he could lodge the deposit late, which would have been possible. The Applicants were entitled to have confidence that the Respondent would comply with his duties as a landlord.
13. The Tribunal did not take into account the alleged behaviour of the Applicants in terms of repairs required to the Property and rent arrears, as these issues are not relevant to the matter before the Tribunal. The Respondent appears to have chosen not to take any steps to try to recover his alleged losses, but that is not a matter for this Tribunal to consider.
14. Taking all the circumstances into account, the Tribunal decided it would be fair and just to award a sum of £650 to the Applicants, which is one times the tenancy deposit.

Decision

15. The Tribunal grants an order against the Respondent for payment to the Applicants of the sum of £650 in terms of Regulation 10(a) of The Tenancy Deposit Schemes (Scotland) Regulations 2011.

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.

Helen Forbes

12 July 2022

Legal Member/Chair

Date