



**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/19/1564

**Re: Property at 1 Trostan Terrace, Thurso, Caithness, KW14 7NX (“the
Property”)**

Parties:

**Mrs Andreina Seabra, 24 Meadow Court, Meadow Lane, Thurso, Caithness,
KW14 8DD (“the Applicant”)**

**Mr Andrew Bremner, 10 Dunbar Terrace, Thurso, Caithness, KW14 7NF (“the
Respondent”)**

Tribunal Members:

Graham Harding (Legal Member)

Decision (in absence of the Respondent)

**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 in the sum of £637.50.**

Background

1. By application dated 16 May 2019 the Applicant complained to the Tribunal that the Respondent had failed to lodge her deposit in respect of her tenancy of the property in an approved Tenancy Deposit Scheme in breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The Applicant provided the Tribunal with a copy of the Tenancy agreement and copies of messages between the parties in support of her application.
2. By Notice of Acceptance dated 4 June 2019 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned.

3. Intimation of the Case Management Discussion was sent to the Applicant by post on 18 June 2019 and to the Respondent by Sheriff Officers on 19 June 2019.
4. The Respondent provided the Tribunal with a written response by email on 1 July 2019. In said email the Respondent advised the Tribunal that he was unable to attend the Case Management Discussion but did not ask for it to be postponed.

The Case Management Discussion

5. The Case Management Discussion was held at Wick Town Hall on 30 July 2019. It was attended by the Applicant. The Respondent did not attend nor was he represented. The Tribunal being satisfied that proper notice of the Case Management Discussion having been given to the Respondent and in light of his written submissions determined that it should proceed in his absence in accordance with the provisions of Rule 29 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”).
6. The Applicant confirmed that her tenancy had commenced on 9 July 2018 and had ended when she moved out of the property on 12 May 2019. She advised the Tribunal that the rent had been £425.00 per calendar month and that she had paid a deposit of £425.00 at the commencement of the lease.
7. The Applicant referred the Tribunal to the tenancy agreement submitted with her application and confirmed that this was the agreement she had signed at the commencement of the tenancy.
8. The Applicant referred the Tribunal to the series of messages exchanged between the parties between 18 April 2019 and 13 May 2019. She confirmed that the Respondent had repaid the deposit to her in June 2019. The Applicant explained that she did not think the Respondent had been entitled to retain the deposit for as long as he had after the end of the tenancy and that had the deposit been lodged in an approved scheme, she would have had the funds returned to her much sooner.
9. In response to a query from the Tribunal the Applicant confirmed that she had been unaware that Private Residential tenancies had replaced Short Assured tenancies with effect from 1 December 2017 and that a tenant could terminate a private residential tenancy by giving a landlord 28 days’ notice in writing.
10. The Applicant accepted that although in her application she had sought a payment order for three times the deposit it was a matter for the Tribunal to determine an appropriate penalty if satisfied that the Respondent had failed to lodge the Applicant’s deposit in an appropriate Tenancy Deposit Scheme within the prescribed period set out in the 2011 Regulations.

11. In determining the application, the Tribunal took account of the documents provided by the Applicant as well as her oral submissions and the written submissions of the Respondent.

Findings in Fact

12. The Applicant was a tenant of the property from 9 July 2018 until 12 May 2019.

13. The parties purported to enter into a Short Assured Tenancy agreement despite such tenancies having been abolished by virtue of the coming into force of the Private Housing (Tenancies)(Scotland) Act 2016 (the 2016 Act”).

14. The Respondent failed to lodge the Applicant’s deposit of £425.00 in an approved Tenancy Deposit Scheme within 30 working days of the beginning of the tenancy in breach of Regulation 3 of the 2011 Regulations.

15. The Respondent misled the Applicant in a text message dated 13/05/2019.

16. The Respondent did not lodge the Applicant’s deposit in an approved scheme throughout the period of the tenancy.

Reasons for Decision

17. The Respondent accepted that the transcript of the text messages between the parties submitted by the Applicant was a true account. The Respondent also accepted that due to an oversight on his part and his own personal circumstances he had never lodged the Applicant’s deposit in an approved scheme.

18. The Tribunal was concerned to note that despite Short Assured Tenancies having been abolished by the coming into force of the 2016 Act, the Respondent had nonetheless attempted to create such a tenancy rather than a Private Residential Tenancy. The significance of this being that with a Private Residential Tenancy a tenant need only give 28 days’ notice to bring the tenancy to an end, therefore the Respondent’s arguments with the Applicant regarding the end date of the tenancy were not in fact relevant.

19. The Tribunal was also concerned that in the Respondent’s text message of 13 May 2019 the Respondent confirmed that he had lodged the Applicant’s deposit in an approved scheme when that was clearly untrue and also that he was legally entitled to retain the deposit for 30 days when that too was untrue.

20. Regulation 10 of the 2011 Regulations provides that: “If satisfied that the Landlord did not comply with any duty in Regulation 3 the Tribunal –

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

21. The amount of the penalty to be awarded is at the discretion of the Tribunal. It does not appear that the Respondent is a professional landlord but from his own admission the Respondent was well aware of the Regulations and failed to lodge the deposit throughout the whole period of the tenancy. As indicated above the Respondent was also untruthful in his communications with the Applicant when he said he had lodged the deposit in a scheme.

22. Having taken account of the fact that the Applicant did eventually receive the return of the deposit in full and all of the circumstances the Tribunal is of the view that this is a case which falls squarely in the middle ground of the sanctioning scale. The Respondent's noncompliance left the Applicant's deposit at risk throughout the whole period of the tenancy. The Tribunal therefore consider that it would be fair, proportionate and just to sanction the Respondent for noncompliance by awarding the Applicant a sum equivalent to one and a half times the deposit (£637.50).

Decision

23. The Tribunal finds the Applicant entitled to an order for payment by the Respondent in the sum of £637.50.

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

Legal Member/Chair

30 July 2019

Date