

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”)

Chamber Ref: FTS/HPC/PR/21/0540

Property at 27 Balmellie Street, Turriff, AB53 4DW (“the Property”)

Parties:

Ms Elaine Crawford, Torfness, 10 Markethill Road, Turriff, AB53 4AZ (“the Applicant”)

Mr Gavin Cumming, Dalmore, Shandcross, Turriff, AB53 5PL (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £200 should be made in favour of the Applicant.

Background

1. By application received on 10 March 2021, the Applicant seeks an order in terms of Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and Regulations 9 and 10 of the 2011 Regulations. The Applicant lodged text messages with the Respondent and written confirmation from her employer of payment of the deposit on 23 March 2021 in support of the application.
2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer on 8 April 2021. Both parties were advised that a case management discussion (“CMD”) would take place by telephone conference call on 7 April 2021 at 2pm and that they were required to participate. Prior to the CMD the Respondent lodged written representations and photographs.

3. The application called for a CMD on 7 May 2021 at 2pm. Both parties participated.

The CMD

4. From the application form, the documents lodged in support of the application, the Respondent's submissions and the information provided at the CMD the Legal Member noted the following: -
 - (i) The tenancy started on 30 December 2020.
 - (ii) The Applicant gave written notice to terminate the tenancy on 18 January 2021.
 - (iii) The tenancy terminated on 15 February 2021.
 - (iv) The parties did not enter into a written tenancy agreement.
 - (v) The Applicant paid a deposit of £500 on 23 December 2020.
 - (vi) The deposit of £500 was not lodged in an approved tenancy deposit scheme.
 - (vii) The deposit was repaid to the Applicant on 1 March 2021.
5. Ms Crawford advised the Legal Member that, as a relocation incentive, her employer had paid the deposit and first month's rent on 23 December 2020. This was a loan, and she has a repayment agreement with them. The deposit was therefore paid on her behalf. She stated that the Tribunal should award the maximum amount in terms of the regulations, of three times the tenancy deposit. She advised that she had entered the tenancy in good faith. At the end of the tenancy, she had to fight to get her deposit back. This was not repaid until 1 March 2021. After she moved out, Mr Cumming had complained to her and her employer about the condition of the property and she believes he had no intention of paying back the deposit.
6. Mr Cumming advised the Legal Member that the deposit was taken, and the keys handed over, during the festive period at the end of December 2020. He had not arranged for a tenancy agreement to be signed because the Applicant wanted to move in quickly and it was the holiday period. He would have arranged this later, had the tenancy continued. When he met the Applicant to hand over the keys, he noted that she had a mobility problem. Had he known this, he would have advised against renting the property because of the stairs. He did not think the tenancy would work out in the long term. For this reason, he did not take immediate steps to check what was required in terms of the regulations. The Applicant gave notice only two weeks after the tenancy had

started. He did not think to lodge the deposit after that as he fully intended to repay the whole deposit when the tenancy came to an end. After the tenancy ended, he was dissatisfied as to the condition of the property. There was damage and it had not been cleaned. At that point he did intend to retain part of the deposit to cover these. However, following correspondence with the Applicant, he repaid the whole deposit on 1 March 2021. Mr Cumming also advised the Legal Member that he has other rented commercial and residential properties and that he and his family have been landlords for 35 years. He conceded that the lease of the property to the Applicant had not been by the “rule book” but that he and the Applicant had got on well and that he had done everything to assist and accommodate her. He invited the Legal Member to make a minimal award.

Findings in Fact

7. The Applicant is the former tenant of the property.
8. The tenancy started on 30 December 2020.
9. The Respondent is the owner and landlord of the property.
10. The Applicant paid a deposit of £500 on 23 December 2020.
11. The Applicant gave notice to terminate the tenancy on 18 January 2021 and the tenancy terminated on 15 February 2021.
12. The deposit paid by the Applicant was not lodged by the Respondent in an approved tenancy deposit scheme.
13. The deposit paid by the Applicant was repaid to her in full on 1 March 2021.

Reasons for Decision

14. Regulation 3 of the 2011 Regulations states –
 - (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.

15. The Legal Member is satisfied that the Applicant's tenancy is a relevant tenancy in terms of the 2011 Regulations and that a deposit of £500 was paid and not lodged in an approved deposit scheme within 30 days of the start of the tenancy. The Legal Member notes that the application was lodged with the Tribunal on 10 March 2021. The Applicant has therefore complied with Regulation (9)(2) of the 2011 Regulations, which requires an application to be submitted no later than 3 months after the tenancy had ended.
16. Regulation 10 of the 2011 Regulations stipulates that if the Tribunal is satisfied that the landlord did not comply with a duty in terms of regulation 3, it “**(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit.**” The Legal Member therefore determines that an order must be made in favour of the Applicant.
17. The Applicant seeks an award of three times the deposit, the maximum which can be awarded. The Respondent invites the Legal member to consider a minimal award.
18. The Legal Member notes that the Applicant's tenancy of the property only lasted 6 weeks. She gave notice to terminate two weeks after moving in, having decided that it did not meet her needs. A tenancy deposit must be lodged (or returned to the tenant) within 30 **working** days of the start of the tenancy. Taking into account the public holiday on 1 January, and weekends, this means that the deposit should have been secured (or returned) by 11 February 2021, four days before the tenancy ended. Had he returned the deposit by this date, there would have been no breach of the regulations. The Legal Member noted that although the Respondent is an experienced landlord, he seemed unaware of the precise requirements of the 2011 Regulations. This is of concern. His failure to arrange for a tenancy agreement to be signed before handing over the keys to the property also suggests a somewhat casual attitude to his obligations as a landlord. However, the Legal Member notes that the Applicant suffered no financial consequences because of the Respondent's failure to lodge the deposit in scheme. Her deposit was returned (in full) two weeks after the tenancy ended, albeit after some correspondence with the Respondent regarding damage and cleaning. Furthermore, it was only unsecured for a period of 18 days, and only 4 of those days relate to the tenancy. In the circumstances, the Legal Member is satisfied that a relatively low award is appropriate in the circumstances and concludes that an award of £200 should be made in favour of the Applicant.

Decision

19. The Tribunal determines that an order for payment of the sum of £200 should be made in favour of the Applicant.

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.

7 May 2021

Josephine Bonnar, Legal Member