

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/PR/21/2085

Re: Property at The Rowans, Moss of Geise, Thurso, Caithness, KW14 7XN (“the Property”)

Parties:

Mr David Kerr and Mrs Elizabeth Kerr, Four Winds, Papigoe, Wick, KW1 4RD (“the Applicants”)

Miss Laura Gunn, The Rowans, Moss of Geise, Thurso, KW14 7XN (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a Payment Order in the sum of ONE THOUSAND EIGHT HUNDRED POUNDS STERLING (£1,800.) be granted.

Background

1. By application dated between 30 August 2020 (“the Application”), the Applicants applied to the Tribunal for an Order in terms of Regulation 10 of the Regulations. The Application comprised a copy of a tenancy agreement between the Parties with an entry date of 12 December 2015, copy correspondence from SafeDeposit Scotland showing that a deposit had been lodged on 27 August 2021 and copy letter from the Respondent to the Applicant confirming that the deposit had been lodged with SafeDeposit Scotland. The Application was accepted by the Tribunal and a Case Management Discussion (the “CMD”) was fixed for 19 November 2021 at 14.00 by telephone conference.

Case Management Discussion

2. The CMD took place on 19 November 2021 at 14.00 by telephone. The Applicants and the Respondent all took part. The respondent was supported by Mr. Murdo

Mackay in terms of Rule 11 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules").

3. The Applicants confirmed the detail of the Application and that they sought the maximum amount of award in terms of the Regulations.
4. The Respondent agreed that there had been a breach of both duties as set out in the Regulations. She explained that she had not been aware of these duties until the tenancy ended, that the tenancy had originally be with her relatives and that the deposit had been lodged in a bank account held for the purpose of the tenancy. She advised that there had been no prejudice to the Applicants. The Parties agreed that the deposit had been returned to the Applicants in full.

Findings in Fact

5. From the Application and the CMD, the Tribunal made the following findings in fact: -
 - i) There had been a tenancy of the Property between the Parties which began on 12 December 2015;
 - ii) A tenancy deposit of £600.00 was paid;
 - iii) The tenancy deposit was not lodged with an approved scheme until 27 August 2021;
 - iv) The Respondent did not provide the Applicants with the information required by the Regulations.

Decision and Reasons for Decision

6. The Tribunal had regard to the following Regulations: -

Regulation 3 which 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. (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."*;

Regulation 42 which states *"(1) The landlord must provide the tenant with the information in paragraph (2) within the timescales specified in paragraph (3) (2) The information is (a)confirmation of the amount of the tenancy deposit paid by the tenant and the date on which it was received by the landlord; (b)the date on which the tenancy deposit was paid to the scheme administrator; (c)the address of the property to which the tenancy deposit relates; (d)a statement that the landlord is, or has applied to be, entered on the register maintained by the local authority under section 82 (registers) of the 2004 Act; (e)the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid; and (f)the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement. (3) The information in paragraph (2) must be provided (a)where the tenancy deposit is paid in compliance with regulation 3(1), within the timescale set out in*

that regulation; or (b) in any other case, within 30 working days of payment of the deposit to the tenancy deposit scheme; and

Regulation 10 which states *"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"*

7. From the Findings in Facts, the Tribunal determined that the Respondent had breached both Regulations 3 and 42, in their entirety. Therefore, the Tribunal was bound to make an Order in terms of Regulation 10.
8. The Tribunal noted that the Respondent's position that she was unaware of the Regulations and that the deposit had been held in a bank account for the tenancy. However, the Tribunal took the view that a responsible landlord ought to be aware of the relevant legislation. The Tribunal took the view that the tenancy deposit was not the Respondent's funds but was the Applicants' funds and, that as the Regulations are in place to protect the Applicants' funds, the Applicants were entitled to that full protection. They were entitled to know where their funds were held and how and when they could access those funds. The Tribunal took the view that the Respondent's failure to comply with the Regulations for almost five years was well in excess of the statutory thirty-day time limit and so was at the extreme end of a breach of the Regulations. Accordingly, the Tribunal awarded the Applicants the full three times the deposit as requested by them.
9. Having made that decision, the Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal "may do anything at a case management discussionincluding making a decision" and so proceeded to make an order for payment in the sum of £1,800.00.

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.

Karen Moore

19th November 2021

Legal Member/Chair

Date