



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

Chamber Ref: FTS/HPC/PR/22/2125

Re: 4 Aulton Cottages, Aulton Road, Cruden Bay AB42 0NN (“Property”)

Parties:

Isabelle Whyte, 1 Farquharson Court, Finzean, Banchory AB31 6LZ (“Applicant”)

Jason Duncan, 433/226 View Talay 2b, Banglamung, Chonbon 20150 Thailand (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Decision :

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent should pay to the Applicant the sum of £1500.

Background

1. The Applicant made an application in Form G ("Application") dated 29 June 2022 under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("Rules") stating that the Respondent had failed to timeously lodge a tenancy deposit in an appropriate scheme in breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("2011 Regulations"). The documents produced to the Tribunal by the Applicant were:
 - A tenancy agreement dated 12 October 2017 which commenced on 1 November 2017.
 - Email from My Deposits Scotland to the Applicant dated 25 April 2022 regarding the Applicant's tenancy of the Property which stated that the deposit was received on 22 April 2022.
 - Copies of emails between the Parties including one from the Respondent to the Applicant dated 24 March 2022 in which he said that he had received payments from the Applicant of £150 on 4 October 2017 and £800 on 24 October 2017 and another dated 25 March 2022 from the Respondent to the Applicant in which he agreed that a total of £1000 had been paid including a deposit of £500.

- Screenshot showing a payment of £800 from the Applicant to the Respondent on 24 October 2017 and screenshot of a payment of £150 being made on 4 October 2017.
2. A copy of the Application and notification of a Case Management Discussion ("CMD") fixed for 13 September 2022 at 2pm was given to the Respondent by letter on 4 August 2022.

Case Management Discussion ("CMD")

3. A CMD took place on 13 September 2022 at 2pm by conference call. The Applicant was in attendance. There was no appearance by the Respondent.
4. The Applicant told the Tribunal that the tenancy commenced on 1 November 2017. She said that she gave notice that she was leaving the Property on 21 March 2022 and returned the keys on 10 April 2022. She said that she paid £150 to the Respondent to take the Property off the market on 4 October 2017. She paid a further £800 on 24 October 2017. She moved into the Property on 1 November 2017. She said that she agreed with the Respondent to pay £50 for new locks on the Property as the existing locks were not functioning.
5. The Applicant told the Tribunal that she found out from My Deposits Scotland on 25 April 2022 that the deposit was lodged with them on 22 April 2022, which was after the tenancy had terminated. She said that she had recently resolved a dispute with the Respondent regarding return of the deposit. She said that the deposit scheme had decided that the Respondent should be paid the deposit. She said this was mainly as the Respondent claimed the cost of replacing a sofa. The Applicant said that she did not have evidence to prove the state of the sofa at the start of the tenancy. She said that the Property was in a very poor condition at the start of the tenancy and she had spent a lot of her own money rectifying defects.
6. The Applicant told the Tribunal that she was now living in sheltered accommodation with her husband who is disabled.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a tenancy agreement which commenced on 1 November 2017.
2. The Applicant paid to the Respondent a deposit of £500 on 24 October 2017.
3. The deposit was received by My Deposits Scotland on 22 April 2022.
4. The deposit was not paid to the administrator of an approved scheme in compliance with the timescales set out in Regulation 3 of the 2011 Regulations.

5. The deposit was paid into an approved scheme some 4 years and 4 months outwith the timescales stated in the 2011 Regulations and on a date that occurred after the termination of the tenancy.

Reasons for the Decision

7. Regulation 10 of the 2011 Regulations states that if satisfied that the landlord did not comply with the duty in Regulation 3 to pay a deposit to the scheme administrator of an approved scheme within 30 working days of the beginning of the tenancy, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. The Tribunal was satisfied that the Respondent did not lodge the deposit in accordance with the timescales required by the 2011 Regulations. The deposit was lodged some 4 years and 4 months late.
8. The amount to be awarded is a matter for the discretion of the Tribunal having regard to the factual matrix of the case before it. The Tribunal in assessing the sanction level has to impose a fair, proportionate and just sanction in the circumstances, always having regard to the purpose of the 2011 Regulations. The Tribunal considered all of the circumstances presented to it and found it to be of significance that the deposit was unprotected for a long period and that the Respondent had not lodged the deposit in an approved scheme until after the tenancy had expired. The Respondent had not taken part in the CMD or provided any written representation. The Respondent had put forward no mitigating circumstances. The Tribunal determined that the sanction should be £1500 in the particular facts and circumstances of this case. This figure is three times the value of the deposit.

Decision

The Tribunal granted an Order for payment of £1500 in terms of Regulation 10(a) of the 2011 Regulations.

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.

Joan Devine

Joan Devine
Legal Member

Date: 13 September 2022