



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

Chamber Ref: FTS/HPC/PR/21/1148

Re: Property at 1E Walter Lumsden Court, Freuchie, Fife, KY15 7DZ (“the Property”)

Parties:

Ms Wendy Hutcheson, 1E Walter Lumsden Court, Freuchie, Fife, KY15 7DZ (“the Applicant”)

Mrs Corainn Adamson, 21 Christiegait, Freuche, Fife, KY15 7EG (“the Respondent”)

Tribunal Member:

Nicola Irvine (Legal Member)

Decision (in absence of the Applicant)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to an Order for Payment in the sum of £650.

Background

- [1] The Applicant submitted an application seeking an order for payment in terms of Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011. The Tribunal intimated the application to the Respondent by letter dated 28 May 2021. The Respondent was advised of the date, time and place of today’s case management discussion. In that letter, the Respondent was advised that any written representations she wished to make should be sent to the Tribunal by 18 June 2021. The Respondent was also told that she required to take part in the case management discussion and was informed that the Tribunal could make a decision today on the application if the Tribunal has

sufficient information and considers the procedure to have been fair. The Respondent lodged written representations on 29 June 2021 and 01 July 2021.

- [2] The Applicant contacted the Tribunal by email on 05 July 2021 to advise that she may be late or unable to participate in the discussion and indicated that if she did not participate, she was content for a decision to be made on the basis of the information already provided.

The Case Management Discussion

- [3] The Respondent participated in the case management discussion which took place by conference call. She was accompanied by her husband. The discussion proceeded in the absence of the Applicant.

- [4] The Respondent advised that she is not an experienced landlord and was entirely unaware of the Regulations until the Applicant brought them to her attention. She has one other tenant who has been a tenant for approximately 10 years. The Respondent expressed regret that she was unaware of the Regulations and advised that the Applicant's deposit was held in a separate account. She advised that there was no question that she would not return the Applicant's deposit. The Respondent made contact with Safe Deposits Scotland and placed the deposit with that organisation in May 2021. The Respondent expressed disappointment that she finds herself a party to the present proceedings, because she considered that she had a very good relationship with the Applicant. After the Applicant vacated the property, the Respondent contacted Safe Deposits Scotland to confirm her agreement that the whole deposit should be returned to the Applicant. As far as known to the Respondent, the deposit has now been returned to the Applicant. The Respondent's position was that it would be unfair to penalise her by making an order for payment, in circumstances where the Applicant did not suffer any loss.

[5] Findings in fact

1. The Applicant entered into a tenancy on 22 December 2018 in respect of the property.
2. The Applicant paid a deposit of £650 to the Respondent by bank transfer at the outset of the tenancy.
3. The Respondent failed to comply with her duty in terms of Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 in respect that the deposit paid by the Applicant was not paid to an administrator of an approved scheme within 30 days as required and separately, the Respondent failed to provide the Applicant with the prescribed information about her tenancy deposit in accordance with Regulation 42 within 30 days.

Reason for Decision

- [6] The Tribunal proceeded on the basis of the written documents which were before it and the information provided by the Respondent at the case management discussion. The Respondent conceded that she had not paid the Applicant's deposit into an approved scheme within 30 days of receipt. There was no Deposit Protection Certificate issued to the Applicant until May 2021. The fact that the deposit was not lodged resulted in the Applicant's deposit being unprotected for almost the entire term of the tenancy.
- [7] The Regulations exist to protect a tenant's deposit and to provide the benefit of dispute resolution, if required.
- [8] The terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 are mandatory and state "*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."*
- [9] The Tribunal was satisfied that the Respondent failed to comply with her duties in terms of that regulation. It was the Respondent's duty to pay the deposit to the scheme administrator and she failed to do that. The Tribunal was mindful of the fact that the Respondent consented to the Applicant's full deposit being returned to her.
- [10] The Tribunal considered that its discretion in making an award requires to be exercised in a manner consistent with the case *Jenson v Fappiano (Sheriff Court) (Lothian & Borders, Edinburgh) 28 January 2015*. It must be fair, just and proportionate and informed by taking account of the particular circumstances of the case.
- [11] The Tribunal considered 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 that the present case is not at the most serious end of the scale and an appropriate sanction for failure to comply with the duties was to order the Respondent to pay the Applicant £650 which represents 1 times the amount of the deposit paid by 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.

Legal Member/Chair

05 July 2021

Date