



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/23/0506

Re: Property at 7B Bridge Lane, Catrine, Ayrshire, KA5 6RR (“the Property”)

Parties:

Miss Janice Neil, 3 The Kirk's Alarm, Cumnock, Ayrshire, KA18 1FF (“the Applicant”)

Mr David Stewart, 12 Ottoline Drive, Troon, KA10 7AW (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that there had been a breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011; and it made an order for payment against the First Respondent in favour of the Applicant in the sum of £350.

Background

1. The Applicant submitted an application on 16 February 2023 under Rule 103 (Application for order for payment where landlord has not paid the deposit into an approved scheme) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.
2. The Applicant sought an order for payment on the basis that the Respondent was said to have breached the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”).
3. By decision dated 3 March 2023, a Convenor of the Housing and Property Chamber having delegated power for the purpose, referred the application under Rule 9 of the Rules to a case management discussion (“CMD”).

4. Letters were issued on 13 March 2023 informing parties that a CMD had been assigned for 16 March 2023, which was to take place by conference call. In that letter, the parties were also told that they required to take part in the discussion and were informed that the Tribunal could make a decision on the application today if the Tribunal has sufficient information and considers the procedure to have been fair. The Respondent was invited to make written submissions by 3 April 2023.
5. On 16 April 2023, the Tribunal received written representations on behalf of the Respondent.

Case Management Discussion – 20 April 2023

6. The CMD took place by conference call. Both parties participated in the discussion. The Tribunal explained the purpose of the CMD. There was no factual dispute between the parties: the Applicant paid a deposit of £350 at the outset of the tenancy, the Respondent did not secure the deposit in an approved scheme, the tenancy ended on 12 December 2022, and the Respondent repaid the full deposit on 17 December 2022. The Respondent explained that he has been a landlord for approximately 15 years and has rented the property to 4 tenants in that time, including the Respondent. He does not own any other rental properties. He has previously secured tenants' deposits in an approved scheme but overlooked doing so on this occasion.

Findings in Fact

7. The Applicant and Respondent entered into a private residential tenancy which commenced 1 June 2021.
8. The Applicant paid a deposit of £350 to the Respondent.
9. The Respondent did not secure the Applicant's deposit in an approved scheme.

Reason for Decision

10. The Tenancy Deposit Schemes (Scotland) Regulations 2011 set out a number of legal requirements in relation to the holding of deposits, and relevant to this case are the following regulations: -

Duties in relation to tenancy deposits

3.– (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.

Sanctions

9.– (1) A tenant who had paid a tenancy deposit may apply to the [First-tier Tribunal] 1 for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit. (2) An application under paragraph (1) must be made [...]2 no later than 3 months after the tenancy has ended.

10. If satisfied that the landlord did not comply with any duty in regulation 3 the [First – tier Tribunal] 1 – (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and (b) may, as the [First – tier Tribunal] 1 considers appropriate in the circumstances of the application, order the landlord to – (i) pay the tenancy deposit to an approved scheme; or (ii) provide the tenant with the information required under regulation 42.

11. The Respondent candidly accepted that he had breached the regulations. The Tribunal determined that the terms of regulation 10 were engaged, and the Tribunal must order that the Respondent pay the Applicant an amount not exceeding three times the amount of her tenancy deposit. The amount to be paid required to be determined according to the circumstances of the case, the more serious the breach of the regulations the greater the penalty.
12. 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.
13. 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 of reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals.”
14. In considering the present application, there was no evidence of repeated breaches or fraudulent intent. The sum involved was relatively modest and the full deposit was repaid to the Applicant within 5 days of the end of the tenancy.
15. For all the reasons set out above, the Tribunal considered that the penalty should be at the lower end of the scale; In respect of the failure to comply with

the 2011 Regulations, a sanction of THREE HUNDRED ANDFIFTY POUNDS (£350.00) is appropriate in this case.

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.

N. Irvine

Legal Member/Chair

20 April 2023
Date