



**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/18/0535

Re: Property at 38 Marywood Square, Glasgow, G41 2BJ (“the Property”)

Parties:

**Miss Ros McIntyre, 26 Goldenberry Avenue, West Kilbride, North Ayrshire,
KA23 9LJ (“the Applicant”)**

Mr Harry Conaghan, 10 Broom Court, Largs, KA30 8EA (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member)

Background

The Applicant raised an application under Rule 103 of the First-tier Tribunal For Scotland Housing and Property Chamber (Procedure) Regulations 2017.

Case Management Discussion

The Applicant contacted the Tribunal Administration Office confirming that she would not be attending the hearing as she is a contractor and does not get paid for time taken off work. She was satisfied that her Application could be dealt with in her absence. The Tribunal were satisfied that she did not need to attend as she had provided sufficient information for the Tribunal to consider her application fairly in her absence.

The Respondent appeared personally. The Tribunal explained to him that the Applicant was not present, and that the Tribunal was satisfied that she did not need to be. The Tribunal explained that the purpose of a Case Management Discussion was to identify the issues between the parties, to agree any facts not in dispute, to decide if a further hearing was necessary and to decide what witnesses and evidence should be heard at any further hearing. The Tribunal also explained that a final decision could be made at the Case Management Discussion.

The Respondent confirmed that he entered in to the Tenancy Agreement with the Applicant, with the tenancy beginning on 1st November 2013. He confirmed that the Applicant paid to him £625 by way of deposit. The Respondent was asked by the Tribunal if he was aware of his obligation to place the deposit in a Tenancy Deposit Scheme, and he said that he was. He said that the money was basically spent before he got it. He had separated from his partner and had debts. The Tribunal asked if he was aware of the sanction which could be imposed for his failure, and he said that he was not.

The Tribunal asked if the respondent still owned the property. He said it had been sold after the Applicant moved out. The Tribunal asked if the Respondent had been a landlord before and if he was registered as such. The Respondent said that he was registered with Glasgow Council, and he had rented out properties in the past.

The Respondent said that he had returned £300 of the deposit initially, retaining the rest towards cleaning and repair. He had hoped to negotiate with the Applicant regarding her accepting she was responsible for the costs. When the application was raised he returned the remainder of the deposit and thought that this would bring the matter to a close.

The Tribunal asked the Respondent if he had anything else he wished to say, and he referred to the documentation he had lodged which documented the damage he felt the Applicant had caused to the property. The Tribunal pointed out that this was a matter which would have been dealt with by the Tenancy Deposit Scheme and the Tribunal did not have jurisdiction in this area.

The Respondent said that he was a single father with two children, who resided with him most of the time. He appreciated that he should have put the deposit in a scheme, but he never had money readily available to allow him to do so. He had paid back £300 immediately and mistakenly thought that he could retain the rest to negotiate over damage.

Given the Respondent's position the Tribunal did not think there was any need to continue the case to a full hearing. The Respondent was advised of this and advised that the Tribunal would issue a decision in due course.

Findings In Fact

1. The parties entered in to a tenancy agreement in relation to the property at 38 Marywood Square, Glasgow G41 2BJ.
2. The Agreement was for an initial term from 1st November 2013 to 31st October 2014 and the Agreement was signed by the parties on 9th October 2013.
3. The tenancy was a "relevant tenancy" in terms of Regulation 3(3).
4. A deposit was paid by the Applicant to the Respondent in the amount of £625.
5. The deposit fell within the definition of a "tenancy deposit" in terms of section 120(1) of the Housing (Scotland) Act 2006, and therefor fell to be paid in to an approved scheme in terms of Regulation 3 of the 2011 Regulations.
6. The Respondent did not pay the deposit in to an approved scheme.

7. The Respondent was aware at the time that he took the deposit that he should have paid it in to an approved scheme.
8. The Respondent has repaid £625, the amount of the deposit, to the Applicant.

Reasons For Decision

The Respondent was clear that he had not put the deposit in to a scheme. He did not attempt to mislead the Tribunal regarding that, and he was also clear that he knew of his obligation to put the deposit in to a scheme. He has returned the deposit in full to the Applicant. He is out of pocket having instructed cleaners and repairs.

However, Regulation 3 (1) states that:

“ 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”

The use of the word “must” makes it an absolute duty on the landlord.

The point of this regulation is to protect the tenant from unscrupulous or impecunious landlords.

The Respondent was aware of his duty to deposit the money in a scheme but decided not to, but he has retend the deposit in full to the Applicant. Weighing up these factors the tribunal has decided to order the Respondent to pay the Applicant a sum equalling one and a half times the amount of the deposit.

Decision (in absence of the Applicant)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent should pay to the Applicant the sum of NINE HUNDRED AND THIRTY SEVEN POUNDS AND FIFTY PENCE (£937.50).

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.

A Kelly

Legal Member/Chair

J

Date

10/5/18