

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section under regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/21/0012

Re: Property at 24/4 Shandon Place, Edinburgh, EH11 1QL (“the Property”)

Parties:

Violeta Haynes Martinez, residing at 8/6 Firrhill Loan, Edinburgh, EH13 9EH (“the Applicant”)

And

Douglas Rogerson, residing at 18 Bapaume Road, Mosan, New South Wales, 2088, Australia (“the Respondent”)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has breached his obligations under regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Background

1. In March 2013 the respondent let to the applicant the property at 24/4 Shandon Place, Edinburgh. A Tenancy agreement was entered into which required payment of a deposit of £700. The tenancy was renewed a number of times and on 22/01/2019 the parties signed a Private Residential Tenancy Agreement. The tenancy ended on 26/11/2020.

The Case Management Discussion

2. A Case Management Discussion took place before the Tribunal by telephone conference at 2.00pm on 1 March 2021. The Applicant was not present, but she was represented by Mr A Wilson of CHAI. The respondent was neither present nor represented. Notice of today’s hearing was served on the respondent on 26/01/2021. I am satisfied that I can justly determine this case in the respondent’s absence.

3. The applicant produces a tenancy agreement and notice to leave, a copy of the decision from the First-tier Tribunal to evict the applicant from the property, together with evidence of enquiries made with approved tenancy deposit schemes. The applicant's position is set out in a written submission dated 15 February 2021.

4. Because the respondent does not resist this application, the facts are not in dispute. A tenancy deposit was paid in 2013. Since 15 May 2013 all tenancy deposits must be held in an approved tenancy deposit scheme. The tenancy deposit was not lodged with an approved tenancy deposit scheme within 30 days of 15 May 2013. Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 tells me that, in light of that admitted fact, I must make a payment order against the respondent. I can dispose of this case today, without the need for a further hearing.

Findings in Fact

5. The applicant's initial tenancy of the property was a short-assured tenancy commencing on 10 March 2013. The applicant occupied the property from 10 March 2013 until 26 November 2020. The original short-assured tenancy was continued a number of times and it was converted into a private residential tenancy on 22 January 2019.

6. Before taking entry in 2013, the applicant paid a deposit of £700 to the respondent. The respondent served a notice to leave on 28 February 2020. On 5 October 2020 the First-tier Tribunal granted an order for eviction and the applicant removed from the premises on 26 November 2020.

7. The deposit of £700 was never paid into an approved scheme.

8. The deposit has not been returned to the applicant. The applicant has not been told why the deposit has not been returned. The applicant cannot go to arbitration because an approved tenancy deposit scheme is not involved.

Reasons for Decision

9. It is not disputed that a deposit of £700 was paid at the commencement of the tenancy. On the facts as I find them to be, the deposit was not paid into an approved scheme so that the tenancy deposit has never been protected, even though it has rested and the hands of the respondent for eight years. On the facts as I find them to be, the respondent has not returned to deposit to the tenant nor has the respondent proposed any deductions from the deposit.

10. The respondent renewed the lease a number of times. Since at least January 2020 he has had the benefit of legal advice. In January 2020, the respondent instructed solicitors to sell the property and between February 2020 and October 2020 the appellant was represented by solicitors in eviction proceedings between the parties.

11. The applicant asks for the maximum penalty. The respondent offers no resistance, and no material is placed before me in mitigation. The applicant still does not know what has happened to the deposit paid eight years ago in 2013.

12. The purpose of the order is not to enrich the applicant. The purpose of the order is to punish the respondent; to mark society's displeasure; to protect society and to ensure the enforcement of the 2011 Regulations in the future. The respondent taken no steps to protect the deposit, nor has the respondent turned his mind to refunding the applicant.

13. The amount of deposit was £700.00. This is a significant breach of the 2011 regulations for which no argument in mitigation is placed before the tribunal. It is eight years since the applicant last saw the money paid as a tenancy deposit. Since then, the deposit has been entirely unprotected, and the respondent has offered no accounting for the money.

14. Without mitigation, without resistance to the application, and without any dispute about the material facts, a payment order of three times the deposit reflects the seriousness of the breach of the 2011 Regulations.

15. The appropriate level of payment order is £2,100.00.

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment to the Applicant of Two Thousand One Hundred pounds (£2,100.00) within 14 days of service of this order.

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Paul Doyle

Legal Member

1 March 2021