

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 Regulation 9 of the Tenancy Deposit
Scheme (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/19/0206

Re: Property at 45 Millgate Loan, Arbroath, Angus, DD11 1PG ("the Property")

Parties:

Ms Sandra Kidd, 4 Elmbank Crescent, Arbroath, Angus, DD11 4EX ("the Applicant")

Mr Darroch Walker, Puddledub Cottage, Guthrie, Forfar, DD8 2SN ("the Respondent")

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined to make an order for payment against the Respondent in the sum of Six hundred and fifty pounds (£650) Sterling.

Background

- 1 By application dated 14 January 2019 the Applicant sought an order for payment of her tenancy deposit. In support of the application the Applicant provided copy Tenancy Agreement between the parties dated 8th June 2018 together with correspondence to the Respondent requesting confirmation as to where her deposit had been lodged.
- 2 Following submission of the application the Applicant contacted the Tribunal to advise that her tenancy had been terminated and she had received confirmation that her deposit had been lodged in an approved scheme on 28 January 2019. She also clarified that she was seeking an order under the Tenancy Deposit (Scotland) Regulations 2011 on the basis that the

Respondent had failed to lodge her deposit in a scheme and provide the required information within the statutory timescales.

- 3 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 16th July 2019. However following a failed attempt to serve the application paperwork on the Respondent the Case Management Discussion was postponed until 10th October 2019.
- 4 The Tribunal was subsequently contacted by Mr Alistair Walker, the father of the Respondent, who advised he was authorised to act as his son's representative in the proceedings and provided proof of same. Accordingly the a copy of the application paperwork together with notification of the Case Management Discussion was served on Mr Alistair Walker as the Respondent's Representative on 7th August 2019.

The Case Management Discussion

- 5 The Case Management Discussion took place on 10th October 2019. Ms Kidd appeared with Jennifer Black as supporter. Mr Walker appeared with his wife Margaret Walker as supporter.
- 6 As a preliminary matter Mr Walker produced a written response that he asked the Tribunal to take into consideration. It was noted that Ms Kidd had not received a copy. The Tribunal therefore adjourned the discussion for a short time to enable both the Legal Member and Ms Kidd to read the terms of Mr Walker's response. The Tribunal thereafter allowed the written response to be accepted into the proceedings.
- 7 In summary the written response highlighted health issues suffered by Mr Walker and explained that he helped his son out with the maintenance of the property. His wife had attended to the tenancy agreement and deposit when the Applicant took up the tenancy. The tenancy was offered at a reduced rent. The response explained that the parties had a good relationship until Ms Kidd explained she was moving out and asked for a reference. Mr Walker had been ignorant of the duty to lodge a deposit with a tenancy deposit scheme until Ms Kidd had raised this with him, by which point the relationship had deteriorated and he was receiving abusive texts. Mr Walker also highlighted issues with the condition of the property at the end of the tenancy. The response concluded by stating that the property was now being managed by letting agents. Mr Walker also produced an email from the Respondent which confirmed he was managing the tenancy on his behalf and made reference to the breakdown in relationship between Mr Walker and Ms Kidd.

- 8 The Case Management Discussion resumed. The Tribunal asked questions of Mr Walker. He confirmed that he accepted the deposit had been received and that it had not been placed in an approved scheme until 28th January 2019. He explained that the reason he was involved with the property was to help his son out. He had not been aware of the requirement to put the deposit into a scheme until Ms Kidd had insisted upon it. He recalled receiving emails from Ms Kidd but by that point the relationship had deteriorated and he would just delete them. He explained that it had not been his intention to defraud anyone and the property was now being dealt with by a letting agent.
- 9 The Tribunal then heard from Miss Kidd. She sought to comment on the terms of the written response from Mr Walker. She explained that as soon as she had given notice to end her tenancy she had received a negative response from Mr Walker. She had asked many times where the deposit was but didn't get any answer. Mr Walker had given her a negative reference, saying she was a bad tenant, was fleeing violence and had mental health issues. There had been no discussion about reducing the rent for the property. Mr Walker had never apologised to her for the issues with the deposit. He had told her the deposit had been lodged on 1st June 2018 when this wasn't the case. It had caused her a lot of stress. The deposit had been lodged on 28th January 2019 therefore there had been a delay in her ability to apply for it to be returned. She had to wait another month and this meant she did not have funds for a deposit for her new tenancy and had to take out a loan. The deposit had now been returned to her in full. She felt Mr Walker had tried to make things difficult for her.
- 10 Mr Walker was then given the opportunity to respond. He spoke about the reduction in rent and that Ms Kidd had said she was planning on staying for a prolonged period. When he had given her reference, he had not spoke badly of her. He simply stated he was disappointed she had only stayed for a short period. He may have referred to her mental condition. The only person who had lost money was his son. She had stated the council paid her rent but it was less than she had previously been paying. Everything had been ok between them until he had given that reference.
- 11 Ms Kidd declined to make any final submissions. The Tribunal then adjourned to consider its decision before advising parties verbally.

Findings in Fact and Law

- 12 The parties entered into a Private Residential Tenancy Agreement dated 8th June 2019.
- 13 In terms of the said Tenancy Agreement the Applicant undertook to pay a deposit of £425. The deposit was paid at the start of the tenancy.

- 14 The Respondent failed to lodge the deposit with an approved tenancy deposit scheme until 28th January 2019.
- 15 The tenancy ended on 7th February 2019.
- 16 The deposit was returned to the Applicant in full by the tenancy deposit scheme provider following the termination of the tenancy.
- 17 The Respondent is in breach of Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011.

Reasons for Decision

- 18 The Tribunal determined the application having regard to the application paperwork, the written representations from the parties and the verbal submissions at the hearing. The Tribunal was satisfied that it was able to make a determination of the application at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties.
- 19 The Tribunal noted that the relationship between the parties had broken down towards the end of the tenancy. Both parties were making allegations against the other and the Tribunal wished to stress that its sole focus in terms of determining the application was the circumstances surrounding the tenancy deposit. Much of what had been said by the parties at the Case Management Discussion was irrelevant to the Tribunal's determination of the issues before it.
- 20 The 2011 Regulations specify clear duties which are incumbent on landlords in relation to tenancy deposits. Regulation 3 requires a landlord to pay any deposit received in relation to a relevant tenancy to an approved tenancy deposit scheme within thirty working days of the beginning of the tenancy. The deposit must then be held by the scheme until it can be repaid in accordance with the requirements of the Regulations following the end of the tenancy.
- 21 The Tribunal accepted based on the evidence from the Applicant that a deposit had been paid in the sum of £425 had been paid in accordance with the terms of the Tenancy Agreement. It was also clear from the evidence before the Tribunal that the Respondent had not lodged the deposit with an approved scheme until 28th January 2019, shortly prior to the termination of the tenancy. Mr Walker, on behalf of the Respondent, did not dispute this. The Respondent was therefore in breach of Regulation 3.
- 22 Regulation 9 provides that any tenancy may apply to the Tribunal for an order where the landlord has not complied with the duty under regulation 3. If satisfied that the landlord has failed to comply, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of

the tenancy deposit. Accordingly having been satisfied that the Respondent had failed to comply, the Tribunal then had to consider what penalty to impose having regard to the particular facts and circumstances of the case. The Tribunal considered it was able to determine this issue without the requirement for a hearing as the substantive matters were agreed between the parties.

- 23 The Tribunal considered the requirement to proceed in a manner which is fair, proportionate and just, having regard to the seriousness of the breach. In doing so the Tribunal took into account the fact that the deposit had remained unprotected for almost the entire term of the tenancy and the Respondent had failed to confirm with the Applicant the location of the deposit until after she had given notice to terminate the tenancy. The Tribunal also took into account the detriment incurred by the Applicant by the delay in obtaining her deposit from the deposit scheme provider after the termination of the tenancy, which was a result of the deposit having been lodged at a late stage in the tenancy.
- 24 The Tribunal also took into account the fact that the Applicant had been refunded her deposit in full and had not suffered any detriment through a lack of access to the independent dispute resolution mechanism provided by the approved tenancy deposit scheme. The Tribunal also noted the Respondent had admitted the breach and expressed remorse. However the Tribunal also had to consider the purpose of Regulation 9, namely to penalise landlords to ensure they comply with the duty to protect and safeguard tenancy deposits. The provisions of Regulation 9 left no discretion where a landlord is found to have failed to comply.
- 25 The Tribunal noted that the Respondent's father had been dealing with the tenancy on his behalf and had been ignorant of the requirement to place the deposit in an approved scheme. However the Tribunal did not consider it satisfactory to suggest that the Respondent was able to absolve himself of his responsibilities as a landlord on that basis. It is the Landlord's obligation to ensure that they abide by their obligations under the Regulations. The Respondent had a duty to ensure he understood his obligations under same and to ensure he had complied, however he had failed to do so.
- 26 The Tribunal was conscious that the regulations permitted it to award an amount of up to three times the deposit where a finding of breach is made. The Tribunal was not persuaded that the circumstances of the matter before it warranted an award at the higher end of the scale which in this case would be £1275. However the Tribunal did consider that an amount in excess of the deposit was reasonable and proportionate in this case. The Tribunal therefore made an order for payment in the sum of £650 against the Respondent.

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.

R.O'Hare

10/10/19

 Legal Member/Chair

Date