

Housing and Property Chamber
First-tier Tribunal for Scotland



Notes on a Hearing of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/17/0538

Re: Property at 14 Grantown Gardens, Airdrie, ML6 0NF (“the Property”)

Parties:

Mr Ryan McCrone, 2A Hallcraig Street, Airdrie, ML6 6AH (“the Applicant”)

Ms Elizabeth Milliken, 86 Crawhill Drive, Bargeddie, Lanarkshire, G69 7FN (“the Respondent”)

Tribunal Members:

Anne Mathie (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“The Tribunal”) determined that the Respondent failed to comply with her duty as a Landlord in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”) as amended by the Housing (Scotland) Act 2014 (Consequential Provisions) Order 2017 by failing to pay the Applicant’s Tenancy Deposit, and grants an Order against the Respondent for payment by the Respondent for payment by the Respondent to the Applicant in the sum of Five Hundred and Forty Seven Pounds (£547) Sterling.

Background

This is a hearing arising out of an application dated 20 December 2017 under Rule 103 of the Chamber Rules. There has been a lengthy history to this case due to difficulties in obtaining a contact address for the Respondent. The address provided to the Applicant was care of the Respondent’s former Letting Agents who have ceased trading during the course of the Case. The Case has called for a Case Management Discussion three times previously on 6 March 2018, 10 December 2018 and 11 March 2019. It is not necessary to go into detail about the full history of the previous Case Management Discussions but at the last Case Management Discussion three issues of dispute were identified, namely

- (1) The amount of deposit paid;
- (2) The relevance of the condition of the Property at the end of the tenancy;
- (3) The relevance of the Letting Agent's failure to lodge the deposit.

A hearing was assigned for today and the following actions were noted:

- (1) The Applicant was to lodge the video recording referred to at previous Case Management Discussion on 11 March 2019.
- (2) The Respondent was to lodge a (hard copy) paginated bundle of productions;
- (3) Any additional productions, witnesses or authorities were to be lodged with the Tribunal and intimated to the other party not less than 14 days before the Hearing.
- (4) Parties were to be in a position to address the Tribunal on the three issues noted above at the outset of the Hearing and evidence would be lead dependent on the outcome of those submissions.
- (5) Parties should be in a position to give reasons to the Tribunal in support of their position as to what order should/should not be made.

Subsequent to the previous Case Management Discussion the Applicant's representative has been in contact with the Tribunal regarding the lodging of the video evidence and intimating a further legal authority along with the names of two witnesses that he wishes to lead evidence from. He was advised by email to bring the video footage to the hearing with a means to play it to show all parties. There have been no further representations, evidence or witness intimation received from the Respondent.

Summary of Discussion

The Applicant attended in person today with his representative, Mr Clayson of the Lay Representation Project, Hamilton. He brought two witnesses namely his mother and father, Amanda and John McCrone. The Respondent appeared in person with her partner, Mr Murphy to provide support. As a preliminary issue, the Tribunal raised the question of the relevancy of evidence regarding the state of the Property at the end of the tenancy. This was the issue that many of the photos lodged by the Respondent referred to the condition of the property and there was also the issue in respect of the video footage and witness evidence from Amanda and John McCrone. The Tribunal's position was that this application was made in terms of Chamber Rule 103 which was an application for an order for payment where Landlord had failed to carry out duties in relation to tenancy deposits. Should a tenant seek the return of their original deposit this would be a separate case and then evidence regarding the state of the Property at the end of the tenancy would be relevant. The Respondent reluctantly accepted this although she did not agree with it. The Tribunal took evidence from Parties in relation to the two remaining issues in dispute, namely the amount of the original deposit and the use of a Letting Agent's services by the Respondent to carry out her tenancy deposit duties. A handwritten receipt had been lodged by the Applicant's representative which stated the deposit to be "Rent + £152 extra deposit £547" this was signed and dated 28/7/16. The Applicant confirmed that he had attended at the Letting Agent's offices and paid over that amount in cash. The Respondent disputed the amount but had no contrary evidence. She had never discussed with the Letting Agents whether they could alter the deposit amount in certain circumstances and had never discussed increased deposits for tenants with

pets. The Applicant's representative advised that he would be prepared to accept the lower figure as a multiplicand in the circumstances. The Applicant's representative raised the issue of whether the Respondent should have been alerted to problems with the Letting Agency earlier due to problems with payments being made on time and should have questioned their services earlier. Upon questioning, the Respondent confirmed that she only had this one Property which she rented out. She was a nurse. She used to live in the Property but had moved in with her partner approximately four years ago at which time she had decided to rent the Property out. She had now moved to a different Letting Agents at beginning April 2018 and saw a vast difference in the level of service she was receiving. She had received a copy of the current tenant's deposit certificate. She had fully expected that the Letting Agents would have lodged the tenancy deposit in the correct manner. She became aware of the problems with deposits after it came to light that a subsequent tenant's deposit had not been lodged in an approved scheme. She had paid the subsequent tenant back their deposit personally and would have done the same in this case had it not been for the damage to the Property at the end of the tenancy.

The lack of a copy of the tenancy agreement was unfortunate but it was not in dispute that the Applicant had rented the Property from July 2016 until 28 September 2017. The Letting Agents had now ceased trading.

Findings in Fact

- (1) The parties entered into a tenancy agreement in respect of the Property at 14 Grantown Gardens, Airdrie on or about 28 July 2016. There was no copy of the tenancy agreement available but it was not disputed that the tenancy came to an end on 28 September 2017.**
- (2) At the outset of the tenancy the Applicant paid the sum of £547 to Letting Hamilton Limited t/a Location in relation to the deposit due in terms of the tenancy.**
- (3) The Applicant's deposit was not protected by being paid into an appropriate Tenancy Deposit Scheme.**
- (4) The sum paid by the Applicant was paid to Location and was not passed on to the Respondent.**
- (5) To date the Applicant's deposit payment has not been returned to him.**

Findings in Fact and Law

- (1) The Tribunal was satisfied that the Respondent did not comply with her duties in terms of Regulation 3 of the 2011 Regulations in respect of the Applicant's deposit of £547.**
- (2) Being so satisfied the Tribunal must make an Order in terms of Regulation 10 of the Regulations for an amount not exceeding three times the amount of the tenancy deposit.**

Reasons for Decision

- (1) In reaching its decision the Tribunal took account of the written and oral submissions of the Applicant and Respondent. The Tribunal accepted that the Applicant had paid the sum of £547 by way of a tenancy deposit to Location. It was a matter of agreement between the Parties that this sum was not paid into a protected Deposit Scheme and also that to date this sum has not been repaid to the Applicant.
- (2) The Tribunal also accepted that the Respondent had employed the service of Location to act as her Letting Agents in relation to the lease of the Property. The Tribunal accepted that the Respondent was acting entirely in good faith. The management of the Property was left entirely to Location. The Respondent understood that all administrative requirements would have been attended to by Location including the protection of the Applicant's deposit in a recognised scheme. The Respondent's position was that the reason she had not repaid the deposit to the tenant in the circumstances was the damage to the Property. This was not relevant in the present proceedings.
- (3) The obligation to pay the deposit to the scheme administrator of an Approved Scheme within 30 working days of the beginning of a tenancy, in terms of the 2011 Regulations, is a duty placed on Landlords and cannot be subcontracted to a Letting Agent. It is not doubted that the Respondent acted in good faith throughout this matter but she remains responsible for the fact that the deposit was not paid into an Approved Scheme.

Decision

Having considered the matter in detail the Tribunal determined to take account of the relevant background circumstances and to make an Order for payment for the sum of £547 by the Respondent to the Applicant.

Right of Appeal

In terms of Section 48 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.

NOTE: This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to tribunal members in relation to any future proceedings on unresolved issues.

Anne Mathie

Legal Member

5 April 2019
Date