

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011
Chamber Ref: FTS/HPC/PR/18/1212

Re: Property at 37 Wellwood Avenue, Lanark, ML11 7HR (“the Property”)

Parties:

Miss Kimberly Carrick, 2 B Violet Gardens, Carluke, ML11 5TJ (“the Applicant”)

Mr Hakan Kavakli, 3 Porteous Place, Forth, Lanark, ML11 8GA (“the Respondent”)

Tribunal Member:

Joseph C Hughes (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

BACKGROUND

1. The Applicant attended the Case Management Discussion. She was accompanied by her mother, Lorraine Carrick and her aunt, Frances Murphy.
2. The Respondent did not attend. He confirmed he was unable to attend due to an appointment at the Consulate in London. The Respondent made no application to postpone the Discussion to allow his personal attendance.
3. The Applicant’s current address was amended from ‘213’ to ‘2B’ Violet Gardens. Her mobile number and email address remain the same.
4. The Respondent’s surname was amended from ‘Kavaki’ to ‘Kavakli’.
5. It became apparent fairly early on in the Discussion that the Applicant had not received the submissions lodged by the Respondent together with his documentary productions. The Discussion was adjourned to allow the Applicant to consider these papers. She was duly provided with copies.
6. The Applicant was the tenant of the property at 37 Wellwood Avenue, Lanark ML11 7HR from 10th February 2018. She gave up that tenancy on 28th March 2018. The Applicant resided within the tenancy alone. The Respondent was the Landlord of the property. This is a relevant tenancy.

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7. The Applicant paid the Respondent the sum of Three Hundred and Fifty Pounds (£350) Sterling as a deposit for the said tenancy.
8. The Landlord accepts that the deposit was not paid into an approved scheme.
9. The Landlord has not repaid any of the deposit to the Applicant on her departure from the tenancy.
10. The Applicant dated her Application (Form G) 2nd May 2018. The Application was received by the tribunal on 16th May 2018.
11. The Respondent stated in his submissions that he did not 'have the opportunity to put the deposit into a scheme'. The reason given was the belief that the tenant was going to move out of the tenancy. He stated that he was a 'first time landlord' and 'had no experience of this kind'. The Respondent further stated that around this time he was awaiting his Landlord Registration Number.
12. Within the Respondent's documentary productions are copy emails in respect of the Landlord Registration. The Landlord Registration Application was received on 10th February 2018. This is the date of the commencement of the Applicant's tenancy at the property. This Application was approved in an email dated 19th February 2018. The Respondent was therefore aware of his Landlord Registration Number around the time the tenant was possibly seeking to leave the tenancy.
13. The Respondent provides details of why he did not return the deposit alleging he required to redecorate the property after the departure of the Applicant from the property. The Applicant does not accept the allegations made by the Respondent.
14. There is agreement between the parties that the deposit was for £350. There is agreement that the deposit was not paid into the scheme administrator of an approved scheme within 30 working days of the beginning of the tenancy on 10th February 2018. There is a breach of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.
15. The Applicant was highly nervous and emotional throughout the hearing. She stated that she was employed as a Support Worker for an organisation. She has been in that employment now for four years. She used up a day's holiday to attend the hearing today. She stated that the dispute over the deposit has impacted upon her mental health. She further stated that she is in debt due the non-return of the deposit.

FINDINGS IN FACT

16. The tribunal made the following findings in fact:
 - (a) The Applicant was the tenant of the property at 37 Wellwood Avenue, Lanark ML11 7HR;
 - (b) The Respondent was the Landlord of the said property;
 - (c) The Applicant entered into a tenancy agreement on 10th February 2018. The deposit was £350. This is a relevant tenancy ;
 - (d) The Applicant vacated the tenancy on 28th March 2018;
 - (e) The Respondent accepts that he failed to pay the deposit to the scheme administrator of an approved scheme;
 - (f) The Respondent refuses to repay the deposit to the Applicant citing redecoration costs he incurred;

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- (g) The Respondent was not a Registered Landlord at the commencement of this tenancy. He applied for registration on 10th February 2018. His registration was approved on 19th February 2018;
- (h) There is a breach of the Landlord's duties in respect of the tenancy deposit; and
- (i) The Respondent is not permitted to withhold the tenancy deposit and is breach of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations (2011).

REASONS FOR DECISION

- 17. The Respondent admits that he failed to lodge the tenancy deposit as required by law in an approved scheme. This deprives the Appellant from seeking recovery of the deposit through the scheme. The Respondent did not have the necessary Landlord Registration in place at the commencement of the Applicant's tenancy. The Applicant utilised her annual leave to attend today. She indicated that the dispute over the deposit has impacted negatively upon her mental health and resulted in her being in debt. The Respondent is in clear breach of his duties as a Landlord in respect of the tenancy deposit.
- 18. It is appropriate that Order for Payment be granted. The Respondent should pay the tenant an amount to reflect the circumstances of this case. I selected one month's rental, name £350, which I considered to be an appropriate amount. I considered the failure to lodge the tenancy deposit a significant breach of the Regulations and deprived the Applicant the opportunity to access the approved scheme's Dispute Resolution mechanism in terms of Part 6 of the said 2011 Regulations.

DECISION

19. The tribunal granted an Order against the Respondent:

- (i) to pay the Applicant the sum of Three Hundred and Fifty Pounds (£350) Sterling in terms of Regulation 10(a) of the 2011 Regulations, and
- (ii) to pay the tenancy deposit to an approved scheme in terms of Regulation 10(b) of the 2011 Regulations.

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.

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Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

Joseph Hughes

Legal Member Joseph C Hughes

Date 14th August 2018