



**Decision with Statement of Reasons 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/18/1285

Re: Property at 128 Brown Street, Paisley, PA1 1YT (“the Property”)

Parties:

Miss Karen Calpin, 48 Espieside Crescent, Coatbridge, ML5 2HH (“the Applicant”)

Mr Surjit Chowdhary, Castle Residential Scotland LTD, 63 Causeyside Street, Paisley, PA1 1YT (“the Respondent”)

Tribunal Members:

G McWilliams (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment by the Respondent to the Applicant of the sum of £375.00, in terms of Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”), should be made.

Background

1. This Application, dated 24th May 2018, was brought in terms of Rule 103 (Application for order for payment where landlord has not paid the deposit into an approved scheme) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the 2017 Regulations”).

The Case Management Discussion

2. A Case Management Discussion was held on 23rd August at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant attended with her representative, Mr J. Melvin, Adviser Coatbridge Citizens Advice Bureau. The Respondent's representative, Mr M. McCusker, attended.
3. The Applicant's representative stated that an additional unlawful deposit sum of £250.00 had been paid by the Applicant in April 2017, being a payment sought by the Respondent to allow the Applicant to continue with her tenancy and keep a pet. He accepted that the deposit was paid into an approved scheme on 20th August 2018, having had sight of the email and copy Safe Deposits Scotland documents sent by the Respondent's representative to the Tribunal on 22nd August 2018. He stated that the Applicant had tried to recover the additional deposit after the tenancy ended, but was unsuccessful. He submitted that the deposit was only now being repaid to the Applicant as a result of the lodging of the Application and his own communications with the Respondent on 20th August 2018.
4. The Respondent's representative accepted that the additional deposit sum of £250.00 had been paid by the Applicant in April 2017. He accepted that the deposit was not paid into an approved scheme until 20th August 2018. He had no knowledge of the Applicant's prior communications with his colleague regarding this matter. He stated that he began dealing with the Application for the Respondent on 20th August and immediately took steps to pay the deposit into the Safe Deposits Scotland scheme and to instruct that this be repaid to the Applicant. He stated that the non-timeous payment into a scheme was a "one-off" oversight on the part of his company.
5. The representatives agreed that the Application had been lodged in time, following the ending of the tenancy on 28th February 2018, and that it was appropriate for the Tribunal to make a determination of the award amount to be paid to the Applicant, as a result of the Respondent's non-timeous payment of the deposit into an approved scheme, at the Case Management Discussion.

Reasons for Decision

6. Regulation 3 of the 2011 Regulations provides that deposits ought to have been paid into an approved scheme within 30 days of the beginning of the tenancy. The Applicant's tenancy began around June 2016. It was agreed by the representatives that the additional deposit of £250.00 was paid in June 2017. It was agreed that the deposit was not paid into the Safe Deposits Scotland scheme until 20th August 2018. The Tribunal interpreted Regulation 3 as also providing that additional deposits, such as that paid by the Applicant, should be paid into an approved scheme within 30 days of receipt by the Landlord or their representative. To form another interpretation would be inconsistent with

the aim of Sections 120 and 121 of the Housing (Scotland) Act 2006 as implemented by the 2011 Regulations, which is to safeguard tenants' deposits. In any event the parties' representatives agreed that the payment of the additional deposit, to Safe Deposits Scotland, was late.

7. The issue for the Tribunal to determine was the amount of the award to be paid to the Applicant, as a result of the Respondent's non-timeous payment of the deposit into an approved scheme. The Tribunal took account of the case papers and the representatives' submissions. The Respondent's representative's company is an established property lettings business. They failed to pay the additional deposit into an approved scheme for some 16 months after receipt. They paid into the Safe Deposits Scotland Scheme after the lodging of the Application and receipt of communications from the Applicant's representative. However, in mitigation, the Respondent's representative had stated that the failure to pay into an approved scheme at an earlier date was due to an oversight and that this error was a "one off". The representative stated that immediately he began dealing with this matter he arranged for the payment into the scheme with an instruction to repay to the Applicant. Having weighed all the factors the Tribunal concluded that it was fair, just and proportionate to make an order for payment by the Respondent to the Applicant of the sum of £375.00, in terms of Regulation 10 of the 2011 Regulations. The Tribunal considered that this award represented a fair, just and proportionate sanction to be imposed on the Respondent as a result of the non-timeous payment of the deposit into an approved scheme.

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.

Gerald McWilliams

G McWilliams

23rd August 2018

Legal Member/Chair

Date