



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Regulation 10 of the Tenancy Deposit
Schemes (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/19/3316

Re: Property at 4 MacDonald Road, Stonehaven, AB39 2LY (“the Property”)

Parties:

Mr Mihai-Andrei Neagu, 31 Redmire Crescent, Portlethen, AB12 4AL (“the Applicant”)

Mr Wojciech Pirog, 44 Cairnvale Terrace, Kincloth, Aberdeen, AB12 5PJ (“the Respondent”)

Tribunal Members:

H Forbes (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted in favour of the applicant in the sum of £1200.

Background

1. This is an application made under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”). The application was made in the period between 16th October and 11th December 2019.
2. Parties entered into a tenancy agreement in respect of the Property. The tenancy commenced on 14th September 2018 and ended on 14th September 2019. The Applicant paid a tenancy deposit of £750 at the start of the tenancy. The deposit was not lodged with an approved tenancy deposit scheme.

3. The Applicant had lodged the application under Rule 103, however, he referred to seeking return of his tenancy deposit. Following correspondence with the Housing and Property Chamber and intervention from the Citizens Advice Bureau, it was clarified that the Applicant was seeking an order in terms of Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Regulations").
4. The Applicant lodged a copy of the tenancy agreement, evidence from the approved tenancy deposit schemes that the deposit was not lodged, a letter from the Applicant to the Respondent dated 23rd September 2019, correspondence from the Citizens Advice Bureau, rental application and a Scottish Gas bill.
5. The Applicant mentioned in the application that he had been given the wrong type of tenancy agreement. It should have been a Private Residential Tenancy. Although the agreement purported to be a Short Assured Tenancy, no Form AT5 had been provided to the Applicant before the start of the tenancy.
6. By email dated 23rd January 2020, the Respondent made written representations in respect of the type of tenancy agreement, payment of rent in cash, an allegation that the Applicant was subletting, and that he had failed to give proper notice. The Respondent stated that he withheld the deposit because of the failure to give proper notice and because he felt he had been flexible with the Applicant.
7. The Respondent said he believed there were faults on both sides and there should not be a full refund of the deposit. With regard to the type of tenancy agreement, the Respondent stated that he had used this type of agreement in the past with no issues and that he was unaware of the need to use a proper agreement or to lodge the tenancy deposit with a scheme.

The Case Management Discussion

8. A Case Management Discussion ("CMD") took place on 3rd February 2020 at the Credo Centre, 14-20 John Street, Aberdeen. The Applicant was present and supported by Ms Ana Maria Ciobotoiu. The Respondent was not present.
9. The Tribunal considered that the Respondent had been given reasonable notice of the date, time and place of the hearing in terms of Rule 24(1). Accordingly, the Tribunal decided to proceed in the absence of the Respondent upon the representations of the party present and all the material before it, in terms of Rule 29.
10. The Tribunal informed the Applicant that matters such as the type of tenancy, the lack of notice and the allegation of subletting were not relevant to the matter before it. The remit of the Tribunal was to consider whether the deposit

had been lodged as required by the Regulations, and, if it had not been so lodged, the level of payment to be awarded to the Applicant.

11. The Applicant said that he had recently been contacted by the Respondent's solicitor offering the return of the deposit. The Applicant said he had spent months trying to get in touch with the Respondent with no success. He felt that, if it was not for the application, the Respondent would not be offering to make payment.
12. The Tribunal noted that the Respondent had accepted in his written representations that he had not lodged the deposit, therefore, the only matter to be decided was the level of award to be made.
13. The Applicant said that he did not have an amount in mind. He was principally concerned with getting his deposit returned and understood that this was not a matter for the Tribunal today. He was content to leave the decision as to the amount to the Tribunal.

Findings in Fact

14. Parties entered into a tenancy agreement in respect of the Property that commenced on 14th September 2018 and ended on 14th September 2019.
15. The Applicant paid a tenancy deposit of £750 at the start of the tenancy.
16. The deposit was not lodged with an approved tenancy deposit scheme.
17. The Respondent is not a first-time landlord. He has let the Property previously.
18. The Respondent has breached Regulation 3 by failing to pay the deposit into an approved tenancy deposit scheme.

Reasons for Decision

19. The Tribunal considered it a serious matter that the deposit remained unprotected throughout the duration of the tenancy for a period of one year, and that, at the end of the tenancy, there was no opportunity for parties to receive independent adjudication by an independent body on whether or not the deposit should be returned.
20. On the information before the Tribunal, it was clear that the Respondent had experience of letting the Property to other tenants, therefore, he was not a first-time or accidental landlord. The Tribunal considered that he ought to have made himself aware of the legal obligations of a landlord.

21. Accordingly, the Tribunal determined that it was fair and reasonable in all the circumstance of the case to make an award in the sum of £1200, which is just over one and a half times the deposit amount.

Decision

22. The Tribunal makes an order for payment in favour of the Applicant in the sum of £1200.

Right of Appeal

23. 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.

H Forbes

Legal Member/Chair

Date: 3rd February 2020