



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/23/3200

Re: Property at 0/1 108 Lancefield Quay, Glasgow, G3 8HR (“the Property”)

Parties:

Mr Jack Christie, Mr Matthew Reid, 0/2 177 Finnieston Street, Glasgow, G38HE (“the Applicants”)

Mr Steven Dick, 0/1 108 Lancefield Quay, Glasgow, G38HR (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that there had been a breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011; and it made an order for payment against the Respondent in favour of the Applicants in the sum of £750.

Background

1. The Applicants submitted an application on 11 September 2023 under 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.
2. The Applicants sought an order for payment on the basis that the Respondent was said to have breached the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”).
3. By decision dated 21 September 2023, a Convenor of the Housing and Property Chamber having delegated power for the purpose, referred the application under Rule 9 of the Rules to a case management discussion (“CMD”).

4. Letters were issued on 2 November 2023 informing parties that a CMD had been assigned for 14 December 2023, which was to take place by conference call. In that letter, the parties were also told that they required to take part in the discussion and were informed that the Tribunal could make a decision on the application if the Tribunal has sufficient information and considers the procedure to have been fair. The Respondent was invited to lodge written representations by 23 November 2023.
5. On 23 November 2023, the Tribunal received written representations from the Respondent.

Case Management Discussion – 14 December 2023

6. The CMD took place by conference call. The Applicants and the Respondent participated in the discussion. The Tribunal explained the purpose of the CMD. The Applicants accepted that they had received £1,255 of the £1,500 deposit by them. The Applicants did not accept that there should have been any deduction from their deposit for cleaning of the property. Their position was that they left the property in the same condition it was at the outset of the tenancy.
7. The Respondent accepted that he had received a deposit of £1,500 from the Applicant and that he had not secured that in an approved scheme. The failure to secure the deposit was through oversight rather than a deliberate act. He had open and transparent communication with the Applicants and if they had been unhappy about the deduction from the deposit, he would have expected the Applicants to discuss that with him. The Respondent has one other rental property and he has secured that tenant's deposit in an approved scheme.

Findings in Fact

8. The parties entered into a private residential tenancy which commenced 3 March 2023.
9. The Applicants paid a deposit of £1,500 to the Respondent.
10. The Respondent did not secure the Applicants' deposit in an approved scheme.

Reason for Decision

11. The Tenancy Deposit Schemes (Scotland) Regulations 2011 set out a number of legal requirements in relation to the holding of deposits, and relevant to this case are the following regulations: -

Duties in relation to tenancy deposits

3.– (1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy

- (a) pay the deposit to the scheme administrator of an approved scheme; and
- (b) provide the tenant with the information required under regulation 42.

Sanctions

9.– (1) A tenant who had paid a tenancy deposit may apply to the [First-tier Tribunal] 1 for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit. (2) An application under paragraph (1) must be made [...]2 no later than 3 months after the tenancy has ended.

10. If satisfied that the landlord did not comply with any duty in regulation 3 the [First – tier Tribunal] 1 – (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and (b) may, as the [First – tier Tribunal] 1 considers appropriate in the circumstances of the application, order the landlord to – (i) pay the tenancy deposit to an approved scheme; or (ii) provide the tenant with the information required under regulation 42.

12. It was agreed that the Applicants paid a deposit of £1,500 to the Respondent at the outset of the tenancy. It was accepted that the Respondent did not secure a deposit for the Applicants in an approved scheme. The Tribunal determined that the terms of regulation 10 were engaged, and the Tribunal must order that the Respondent pay the Applicant an amount not exceeding three times the amount of her tenancy deposit. The amount to be paid required to be determined according to the circumstances of the case, the more serious the breach of the regulations the greater the penalty.
13. The Tribunal considered that its discretion in making an award requires to be exercised in a manner consistent with the case *Jenson v Fappiano (Sheriff Court) (Lothian & Borders, Edinburgh) 28 January 2015*. It must be fair, just and proportionate and informed by taking account of the particular circumstances of the case.
14. The Tribunal considered the decision of the Upper Tribunal (UTS/AP/19/0020) which states: “Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate of reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals.”
15. There was nothing before the Tribunal to suggest that the Respondent had any fraudulent intent or deliberately failed to secure the Applicants’ deposit. The Respondent was candid about his failure to comply with the 2011 Regulations in this instance. He has a tenant in another let property and has secured that tenant’s deposit. The Tribunal took account of the payment of a sum by the Respondent to the Applicants in the days following the end of the tenancy. For all of these reasons, the Tribunal considered that the penalty should be at the lower end of the scale. In respect of the failure to comply with the 2011 Regulations, a sanction of £750.00 is appropriate in this case.

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.

Nicola Irvine

Legal Member/Chair

14 December 2023
Date