



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014 on an application made under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/23/3812

Re: Property at 0/2 420 Kilmarnock Road, Newlands, Glasgow, G43 2RN (“the Property”)

Parties:

Mr Neil Yi - Sheng Tan, Dr James Vella, 2/2 116 Dundrennan Road, Glasgow, G42 9SH; 19 Triq il-Kbira Mosta, Malta, Europe, MST1014, Malta (“the Applicant”)

Mr Christopher Service, 283A Muirhall Street East, Coatbridge, ML5 3RZ (“the Respondent”)

Tribunal Member:

George Clark (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be granted without a Hearing and made an Order for Payment by the Respondent to the Applicants of the sum of Eight Hundred Pounds (£800).

Background

1. By application, received by the Tribunal on 26 October 2023 and updated on 8 November 2023, the Applicant sought an Order for Payment in respect of the failure of the Respondent to comply with Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The First-named Applicant stated that, before he moved in, the Second-named Applicant and a Miss Boom were tenants, and their deposit was held in an approved tenancy deposit scheme, MyDeposits Scotland. When Miss Boom moved out and he moved in, a new tenancy agreement was entered into between the Applicants and the Respondent. The letting agents had told the First-named Applicant that he would have to pay his deposit to the outgoing tenant privately,

so that they could keep the deposit lodged. The First-named Applicant did that, but the Respondent and his letting agents failed to advise the tenancy deposit company of the change of tenant. The result was that, when the tenancy ended, and the Respondent lodged a claim against the deposit, MyDeposits Scotland communicated this to Miss Boom, as they still had her listed as the Lead Tenant, not having been told of the change of tenant. The Applicants, therefore, had no knowledge of the Respondents' claim at the relevant time and no opportunity to contest it.

2. The application was accompanied by a copy of a Tenancy Agreement between the Parties, commencing on 13 September 2022 at a rent of £700 per month, with a deposit of £800. The Applicants also provided a copy of an e-mail of 6 September 2022 from the letting agents to the Second-named Applicant, copied to the First-named Applicant, stating that the new tenant moving in would have to pay the money privately to the outgoing tenant "so we can keep the deposit lodged". They stated, in relation to Miss Boom's deposit, "If this is a change of sharer then we cannot refund the deposit as it means we would not have a deposit or the property anymore."
3. The Applicants provided a further email of 11 September 2023 from MyDeposits Scotland to the Second-named Applicant, in which they said *"At the end of the tenancy, either the named lead tenant on the deposit protection or the registered landlord/agent of the scheme are able to initiate the release of the deposit. Once the deposit release has been initiated, the scheme will send communication (email or text message) to the opposite to inform them of the deposit release request received and they will be provided 30 working days to submit their response. If both tenant and landlord/agent agree and accept the deposit release request received or the opposite do not submit their response within the 30 working day time frame provided, the scheme will automatically release the deposit in accordance with the request received and advise to allow up to 5 working days for payment to be processed."*
4. In a further email of 01 November 2023 to the Second-named Applicant, MyDeposits Scotland stated *"the scheme were not made aware of the change of tenants by your former landlord/agent. During a change of tenants the landlord/agent is required to register the new tenancy details with the scheme and either initiate the deposit release on the current deposit protection and relodge the deposit with the scheme on the new deposit protection or contact the scheme direct and request a deposit transfer from the current deposit protection to the new deposit protection."*
5. On 18 January 2024, the Respondent provided written submissions. In part, they related to the issues that had caused him to seek to have the deposit paid to him rather than to the Applicants, and the Tribunal did not consider those aspects of the submissions, as the application related solely to the lodging of the deposit. He also provided screenshots of messages between him and the former tenant, Miss Boom. She had contacted him, as the Applicants were saying that the deposit must have come back to her as she was still incorrectly listed as the main tenant. In addition, the Respondent provided copies of email exchanges between him and the letting agents. In an email of 22 December

2023, they confirmed the process they had undertaken when the change of tenancy took place. They entered into a new tenancy agreement with the Applicants and sent a copy of the Deposit Protection Certificate (“DPC”) to the Applicants, but due to an administrative error at this final point, the DPC itself was not amended to reflect the name of the First-named Applicant, and still contained the name of Miss Boom. They added “This was purely an administrative error and the deposit remained protected at all times.” They attached a copy of the DPC, which gave the start date of the tenancy as 13 June 2022, but, on a second page, named the tenant as Miss Emma Boom. The submissions also included a copy of a “Change of Sharers Form” in which the tenants, Miss Boom and the Second-named Applicant agreed that the deposit could be retained to be held as security of the obligations of the tenants under the new Tenancy Agreement.

Case Management Discussion

6. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 8 February 2024. The First-named Applicant, Mr Tan, and the Respondent were present.
7. Mr Tan advised the Tribunal that the essence of the complaint was that the Respondent had failed to protect his deposit under the tenancy agreement, as the tenancy deposit company did not have the correct tenants’ names. He confirmed that he had had no contact with MyDeposits Scotland prior to the deposit being paid out to the Respondent. He accepted that the fault lay with the letting agents, Slater Hogg & Howison and their parent company, Countrywide, but the knock-on effect of their failure meant that he did not have any knowledge of the Respondent’s claim until it was too late, as MyDeposits Scotland had not been told that Miss Boom was no longer the lead Tenant. The Applicants had only discovered the clerical error when they tried to have the deposit released but were told that it had already been paid out to the Respondent.
8. Mr Service told the Tribunal that he used letting agents to work on his behalf and that, if the Applicants wanted to go after anyone, it should be them. The letting agents had admitted their mistake.

Reasons for Decision

9. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 states that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation to enable it to determine the application without a Hearing.
10. Under Regulation 3(1) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“The 2011 Regulations”), a landlord must, within 30 working days of the beginning of the tenancy pay the deposit to the scheme administrator of an approved scheme. Under Regulation 10, if satisfied that the landlord did not comply with any duty in Regulation 3, the Tribunal **must** order

the landlord to pay to the tenant an amount not exceeding three times the amount of the tenancy deposit. Regulation 42 of the 2011 Regulations requires a landlord to provide certain information to tenants, including the name and contact details of the scheme administrator of the tenancy deposit scheme to which the deposit has been paid.

11. The Tribunal noted that the Respondent himself was not involved in the matter of lodging the deposit. He relied on the letting agents for that. Nevertheless, it is landlords who are responsible for ensuring compliance with the 2011 Regulations, although they may have a right of relief against agents who have, by action or inaction, caused a compliance failure to occur.
12. The view of the Tribunal was that the letting agents should have been well aware of the processes undertaken by tenancy deposit companies that they use. It may have seemed a pragmatic step to ask Mr Tan to pay his deposit to Miss Boom, leaving intact the funds held by MyDeposits Scotland, but they must have known that, at the end of the tenancy, MyDeposits Scotland would communicate only with the named Lead Tenant and that it was, therefore, incumbent on them as letting agents to intimate that the identity of that person had changed, particularly as a new tenancy agreement had been entered into.
13. The Tribunal could not speculate as to whether the Respondent would have been entitled to claim any or all of the deposit when the tenancy came to an end, but one of the main purposes, indeed perhaps the main purpose of the 2011 Regulations, is to ensure that deposits are held by an independent third party which is empowered to adjudicate on any dispute between a landlord and a tenant as to what should happen to the deposit when the tenancy ends. It was doubtless an inadvertent error by the letting agents, but its effect was that the Applicants were denied the opportunity to contest the Respondent's claim that the deposit should be paid out to him.
14. The Tribunal determined, therefore, that the Respondent had failed to comply with the requirements of Regulation 3(1) of the 2011 Regulations and that, accordingly, the Tribunal must order the Respondent to pay a sum of money to the Respondents.
15. Having considered all the facts and circumstances of the case, the Tribunal decided to order the Respondent to pay to the Applicants the sum of £800. This was a figure that the Tribunal regarded as fair, proportionate and just, taking into account the stress and inconvenience and potential loss of opportunity caused to the Applicants by the Respondent's failure to lodge the deposit as required by law.

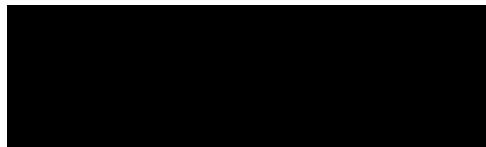
Right of Appeal

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.

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.



Legal Member/Chair

8 February 2024
Date