

**Decision with Statement of Reasons 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/23/1413

Re: Property at Flat 6 24 Simpson Loan, Edinburgh, EH3 9GE (“the Property”)

Parties:

**Ms Chuqi Yang, formerly at Flat 37 6 Simpson Loan, Edinburgh, EH3 9GT and
now at 32 Windsor Court, Moscow Road, London, W2 4SN (“the Applicant”)**

**Mr Lai Ting Adrian Chan, 27A Southmark 11 Yip Hing Street,, Hong Kong
999077 (“the Respondent”)**

Tribunal Members:

Melanie Barbour (Legal Member) and Ahsan Khan (Ordinary 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 would make an order for payment
of £500 in favour of the Applicant.**

Background Discussion

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 103 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017

Rules”) seeking an order against the landlord failure to lodge a tenancy deposit.

2. The application contained:-

- a. Tenancy agreement;
- b. Text messages
- c. Evidence from approved deposit schemes that they held no deposit for the property; and
- d. Evidence of payment of the deposit.

3. The respondent had submitted written representations.

4. A case management hearing had taken place on 9 October 2023. Certain matters were in dispute and the tribunal fixed a hearing to determine those matters. Reference is made to the terms of the discussion note and direction issued at that time. No further documents were submitted after the case management discussion.

5. This case called for a hearing on 9 January 2024. In attendance was the applicant, and the respondent’s solicitor, Mr Barnes from Horwich Farrelly Scotland.

6. Also heard at the same time, 9 January 2024, was an associated payment application for repayment of the tenancy deposit. The respondent’s agent advised that his client was no longer opposing that application and intended to repay the tenancy deposit to the applicant. He advised that it would be repaid within a period of seven days from 9 January 2024. That case was continued to a further case management discussion for settlement.

Discussion

7. The respondent's agent advised that the respondent now accepted that the licence to occupy granted by him had all of the necessary characteristics of a tenancy agreement, and the respondent was no longer disputing that the parties were parties to a relevant tenancy. He advised that the matter to be considered was what penalty to impose and what mitigation should be applied.
8. The applicant advised that when she gave notice that she was moving out at the end of April 2023, the respondent refused to return the deposit to her. The tenancy ended in April 2023. At this stage the applicant sought advice about how to get her deposit returned. When she did this she discovered that the respondent was supposed to place the deposit into an approved deposit scheme.
9. She said that after she submitted the application to the tribunal for the breach of the deposit regulations, the respondent sent two letters to the tribunal making accusations about her which were not true, including in relation to the condition of the tenancy when she left it. She advised that the respondent asked an ex-flat mate to make a statement that the applicant was not a tenant and the respondent was not a landlord. She had spoken to her ex-flatmate about the letter and had been told that she did not know why she had been asked to write the letter.
10. She advised that she was seeking an order for breach of the deposit regulations because the respondent had not repaid the deposit to her.
11. She advised that the respondent had called her names in a group chat they were in with other tenants in the property. He had told her to "*have a good life bitch*". She was offended by his name calling and did not consider it acceptable behaviour. This was from a chat in July 2023.
12. She advised that the tenancy had ended on 20 April 2023.

13. She had asked him to check the property when she gave him advice that she was leaving. In February 2023 he had indicated that he would check the property in July 2023 and repay the deposit at that time. He had then complained about the state of cleaning in the property.
14. She advised that she needed to ask for assistance from her family to get money when she moved out. She said it had had a great impact on her, his language and his attitude to her, and his treatment to her as a tenant.
15. The respondent had denied that he was a landlord and she was a tenant. He had contacted her and advised her that he had a right to have his friends come round to the property. He said that she had refused his friends' entry. She advised that this did not happen. She advised when her first flatmate left, he wanted someone to move in straightaway that evening. She was not happy about this as she did not know the person and she was worried about someone moving in at night time. She said that she was scared and did not want her moving in that night. The flatmate called the applicant at 2 am and said she was moving in with her. She advised that the new flatmate said that the landlord would get her evicted. And that she had no right to keep her old flatmate's key.
16. She advised that she got the flat in around June 2022. Her friend was moving out of the flat and her friend offered her the chance to move in. The rent included bills. The rent was £1100, and after her friend moved out she paid £1300.
17. To get the deposit back, she sent him photographs of the property at the end of the tenancy, he contacted her and advised that he would charge a fee for disposing of items she had left, she then said that she could collect them, and the landlord then told her that he could keep them. He said that he would not return the deposit.
18. The respondent's agents asked questions of the applicant. He asked did she agree that the contract said "licence to occupy". The applicant said yes that was

what it said. He then referred to the preamble it referred to licensor and licensee. She agreed. Clause 10 states that any repairing fee due to damages will be deducted from the deposit, but there was no reference to the tenancy deposit scheme. She agreed, yes, but said that the agreement was a tenancy agreement. She did not agree that it was a licence to occupy. She advised that she did not appreciate the difference between licence to occupy and tenancy agreement. She advised that she had studied in Edinburgh prior to moving into the property. She had stayed in another tenancy and signed an agreement for that rental. She denied that she was familiar with tenancy agreements and the terms of them. She said before she moved into the property she had signed her last tenancy one and half years ago. She is not a native speaker. The terms do not mean that much to her. She agreed she had read the tenancy agreement before she signed it. She advised that she was not familiar with what a tenancy agreement looked like. She was not able to tell the difference. She thought the clauses were in effect the same between the tenancy agreement and the licence to occupy. She said that she did not know if the persons who drafted the licence to occupy had meant her not to be a tenant. She advised that the respondent was referred to as a landlord in the group chat, and her friend who had stayed in the property before her referred to the respondent as a landlord. She accepted that the respondent intended the agreement to be a licence to occupy, but she advised that she did not know the difference between the two.

19. The respondent's agents then summed up his case. He advised that there were three issues to consider:-
20. The respondent had no relevant convictions before this application had been brought. He is not a landlord by trade. He lives in Hong Kong and works there. He apologised for the language he had used against the applicant. He has offered and agreed to repay the deposit.
21. He advised that it is clear that the document was not supposed to be a tenancy agreement and was meant to be something other, and in such a case the deposit would not have been something that was required to be paid into an

approved scheme. He suggested that there was no reasonable expectation that the deposit should have been put into a scheme.

22. Since October 2023 he has sought legal advice and he has cooperated with the application against him. He has tried to offer to resolve the matter in full since October 2023. He has repaid the other case against him with another occupier in full.

23. He advised that he had had the property for 8 years. This is the only property he has in the UK and he continues to occupy it as a holiday home. In terms of repaying the deposit, the property had to be inspected by a friend. Any damage to the property would be fixed by the deposit. He advised that the respondent was not relying on any evidence of the nature and extent of damage to the property and the respondent was repaying the full deposit.

24. In summing up the applicant advised that the respondent had been letting the property out before she moved in, there had been other people living there and various people since. It was clear that he was letting the property out. The licence to occupy was really a tenancy agreement.

Findings in Fact

25. The Tribunal made the following findings in fact:-

26. The Respondent was the landlord, and the Applicant was the tenant.

27. While the tenancy agreement was called "licence to occupy" it was accepted by the respondent that it was in fact a lease. The lease stated that the term would end on 20 July 2023.

28. The tenancy agreement commenced on 20 August 2022.

29. The tenancy ended on 20 April 2023.
30. The application to the first-tier tribunal was received on 3 May 2023.
31. The Applicant had paid the Respondent a tenancy deposit on 17 June 2022 of £1100.
32. On around 21 February 2023 the applicant gave notice to end the tenancy and that she was planning to leave it on 20 April 2023. The respondent replied on 22 February 2023 advising that he would check the flat in July and return the deposit then.
33. The tenant asked the respondent about the return of the deposit once she had left the property. The respondent did not repay it to her advising that there were cleaning and other costs to be paid from the deposit.
34. Clause 11 of the tenancy agreement provides that a deposit of £1100 was paid by the tenant on 17 June 2023.
35. At the date of the hearing 9 January 2024 the respondent had undertaken to repay it in full within 7 days from the 9 January 2024.
36. None of the applicant's deposit totalling £1100 was secured with an approved tenancy deposit scheme throughout the tenancy.
37. The tenancy deposit had not been lodged with an approved tenancy deposit scheme within 30 working days of the tenancy commencing.
38. The respondent lived and worked in the medical profession in Hong Kong. The property was his only property in the UK. His family had purchased it for him to use while studying in Edinburgh. He was not to trade a full-time landlord.

39. The property had been let to a number of different persons since at least around August 2022.

Discussion

40. 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 has 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.

41. The Respondent accepted that there was a relevant tenancy in place, a deposit had been taken from the applicant, and had not been placed in a tenancy

deposit scheme in accordance with the tenancy deposit regulations. Given this the terms of regulation 10 are engaged, and the tribunal must order that the Respondent pay the Applicant an amount not exceeding three times the amount of their tenancy deposit. The amount to be paid requires to be determined according to the circumstances of the case, the more serious the breach of the regulations the greater the penalty.

42. In this case, the tribunal consider that a sum of £500 would be appropriate. While there has been a breach of the regulations, we consider that it is at the lower end of the scale in terms of seriousness.

43. In considering what penalty to impose, we have had regard to the verbal and written submissions of both parties.

44. Matters which we consider to be relevant in mitigation for the respondent are :
The lease lasted less than 1 year. The respondent's agent advised that he had taken legal advice and was treating the application seriously. He had offered to pay the full deposit back within 7 days of 9 January 2024 and he had advised his agent that he would repay when he instructed his agent in October 2023. The respondent accepted his mistake. He apologised for his rude language to the applicant when discussing repayment of the deposit. He lives and work abroad. This property is his only property in the UK. He does not have other properties which he rents out. He is not a landlord by trade. The respondent has no earlier decisions against him for breaches under these regulations. The rent included gas, electricity, telephone, broadband, tv licence and management fees which supported the respondent's assertion that this was not a commercial venture but more akin to a holiday rental.

45. Matters which we consider exacerbate the breach are:- The fact that the respondent did not repay the deposit back when he was requested to do so. He used derogatory language to the applicant when she asked for the deposit to be repaid. That the respondent advised the applicant that he was withholding the deposit due to the condition of the property, and by this action prevented

the applicant from seeking to have the matter adjudicated in an independent adjudication process. That he had rented the property out to other persons before and after the applicant resided there.

46. It was suggested that the fact that the respondent did not intend to enter into a tenancy with the applicant was a point in mitigation for the respondent. The tribunal does not agree. The terms of the agreement appear relatively clear, a tenancy was being entered into, whatever the respondent intended. Further, he had rented this property out to others before and after the applicant had lived there. While this may not be his full-time occupation, he is renting the property out and therefore has duties as a landlord which he requires to comply with.

47. We consider the total deposit money was quite a significant sum at £1100 and it should have been secured. We consider that failure to place the deposit into a scheme was serious enough in itself, and more so when the respondent would not repay it, and advised that he was retaining it due to damages to the property. This prevented the applicant from recovering her deposit, and left her without the statutory protection she was entitled to in terms of an independent adjudication scheme. We place weight on these matters when deciding what penalty to impose. We also place some weight on the fact that he used intemperate language in the group chat towards the applicant. Countered against those matters are that we accept that the respondent was not a landlord by trade, and lives and works abroad in a different profession. He appeared to be renting the property to friends and family on a rather non-commercial basis. Once served with the application he appears to have sought early legal advice, and accepted that advice. He had no previous decisions against him for any breaches of the tenancy deposit regulations. The lease lasted for less than a year and the deposit was not unsecured for a long period. The respondent may have been entitled to claim damages for the property against the applicant, and we consider that his offer to repay all of the deposit shows that he is keen to resolve matters in favour of the applicant. We note that his first email back to the applicant had been to confirm that he would check the flat in July and repay the deposit, so it does appear he had initially intended to repay it. The fact that

the applicant had applied to the tribunal very shortly after she had left the property left no time to try and resolve the matter outwith the tribunal's jurisdiction. We consider that these matters mitigate against a high penalty in this case. Other than being upset that the respondent had called her names, and that she had had to borrow money from her family, the applicant did not appear to have been unduly prejudiced or distressed by this failure of the respondent to secure her deposit. We also find therefore that this leads us to finding that a lower penalty should be imposed on the landlord in this case.

48. Balancing up all factors therefore, we find that an award of £500 is reasonable as it reflects that there was a breach of the regulations, but it takes into account all the mitigation surrounding this case.

Decision

49. 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 would make an order for payment of £500.00 in favour of the Applicant.

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.

Legal Member/Chair

19 January 2023

Date