

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under the Housing (Scotland) Act 2006 section 121 and Regulation 9 the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/23/1922

Re: Property at 4/2 31 St. Andrews Street, Glasgow, G1 5PB (“the Property”)

Parties:

Mr Charles Eyoma-Murray, 4/2 31 St. Andrews Street, Glasgow, G1 5PB (“the Applicant”)

Mr Roberty Richmond, Lynne Gray Richmond, 9 Caiyside, Edinburgh, EH10 7HN (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member)

Decision (in absence of the Applicant)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondents are in breach of her obligations in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“Regulation 3”). The Respondents shall make payment to the Applicant in the sum of £300.00 (THREE HUNDRED POUNDS) STIRLING.

Background

1. The Tribunal received an application from the Applicant in terms of Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Rules 2017 which was signed on 20th December 2021. The Application included a lease which detailed that a deposit of £500 had been paid.
2. On 7th August 2023, all parties were written to with the date for the Case Management Discussion (“CMD”) of 6th September 2023 at 2pm by teleconferencing. The letter also requested all written representations be submitted by 23rd August 2023.

3. On 8th August 2023, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondents personally in the hands of the First Named Respondent. This was evidenced by Certificate of Intimation dated 8th August 2023.

The Case Management Discussion

4. A CMD was held on 6th September 2023 at 2pm by teleconferencing. The Applicant was not present and not represented. The Respondents were present and represented by Ms Kara MacGregor-Duke. The Tribunal proceeded without the Applicant in terms of Rule 29 of the Rules. Ms MacGregor-Duke confirmed to the Tribunal that it was admitted by the Respondents that they had not lodged the deposit in an approved scheme within 30 days. This is their only rental property. They have raised applications with the Housing and Property Chamber to evict the Applicant and for payment of rent arrears in a conjoined case. This case calls on 19th September 2023. If an order for eviction is granted by the Tribunal then the Respondents plan to sell the Property. The Respondents confirmed that they will then remove themselves from the Landlord Register. The deposit was lodged into an approved scheme on 9th January 2023 when the Respondents became aware of their legal duty. Ms MacGregor-Duke said that there had been no prejudice to the Applicant by the deposit being lodged late into an approved scheme. The First Named Respondent told the Tribunal that the Respondents have let out this property for 10 years to students. They have managed it themselves. They have had tenants from word of mouth recommendations from other previous tenants. They have never taken a deposit and put it into an approved scheme. They did have advice previously from a solicitor but now realise that that advice was incorrect. They had relied upon this advice. The Second Named Respondent noted that the Applicant had not given the deposit over when the tenancy started. The tenancy had started on 7th September 2020. The Applicant was allowed to occupy the Property from 17th August 2020. He did not pay the deposit until 9th November 2020. The Tribunal was satisfied that it was appropriate to decide in this case without the Applicant being present as the matter revolved around a breach of the regulations which had been admitted. Ms MacGregor-Duke raised Regulation 9(2) the Tenancy Deposit Schemes (Scotland) Regulations 2011. This regulation states that an application must be made no later than 3 months after the tenancy has ended. Ms MacGregor-Duke took this to mean that the tenancy must end before an application can be submitted. The Tribunal did not consider this to be the correct interpretation of the Regulations. The Regulations are there to ensure that deposits are lodged in an approved scheme such restrictions on raising an application would not support that. Ms MacGregor-Duke accepted that and did not challenge it further.
5. On 19th September 2023, the Applicant emailed the Housing and Property Chamber to request that the case be recalled as he was unable to connect to the call. An email was received by the Housing and Property Chamber at the exact time that the CMD was to start saying that the Applicant was not able to

join the CMD. The Tribunal was not informed of this and could not make a brief adjournment to allow the Applicant to attend.

6. On 12th October 2024, the Tribunal accepted that it was in the interest of justice to allow the recall to be granted given that the Applicant had intended to attend the CMD but had been unable to dial into the CMD. It was noted that this may or may not change the Tribunal's decision as the Respondent gave evidence at the CMD regarding the breach of the regulations and what has been done in terms of preventing such a breach occurring again. The Recall was allowed.
7. On 16th January 2024, all parties were written to with the date for the Case Management Discussion ("CMD") of 1st March 2024 at 10am by teleconferencing.
8. On 22nd February 2024, the Applicants representative emailed the Housing and Property Chamber lodging a further submission.

The continued Case Management Discussion

9. A CMD was held on 1st March 2024 at 10am by teleconferencing. The Applicant was not present and not represented. The Respondents were present and represented by Ms Chloe Herd, Trainee Solicitor, Complete Clarity Solicitors & Simplicity Legal. The Tribunal proceeded without the Applicant in terms of Rule 29 of the Rules.
10. Given that the previous CMD was recalled as the Applicant could not connect to the CMD, the Tribunal asked the Tribunal Clerk to confirm with the caseworkers if there had been any correspondence from the Applicant before stating the CMD. It was confirmed that the Applicant had been written to and that there had been no contact from him to inform the Tribunal of his absence. The Tribunal did not start until 10.20am to allow the Applicant suitable time to join. The Tribunal considered it appropriate to proceed. The CMD ended at 10.33am. The Applicant had not joined the call during that time.
11. Ms Herd said that matters in terms of the Applicant's remains as it did at the previous CMD. She noted that there has been an order for eviction granted. The Order will be able to be enforced on 18th March 2024. The Applicants still plan to sell the Property. She noted that there are arrears of £955 plus interest on the rent account. The Tribunal noted this but that it cannot make an award as a penalty in order to equate to the rent arrears. Rent arrears result from a debt on the rent account where this is a breach of the regulations.
12. Ms Herd motioned for expenses under Rule 40. She said that this was related to the reasons which the Applicant had raised the recall. The Tribunal noted that the only reason why the recall was allowed was in relation to the Applicant not being able to connect to the call. It is his right to recall and also his right not to attend. The motion for expenses was refused.

13. The Tribunal considered that in terms of the breach of the Regulations matters remained the same. The Tribunal did not consider that there was any more information which meant that the previous award of £300 should be changed.
14. The Tribunal noted that under the Rules the application can only be recalled once.

Findings and reason for decision

15. A Private Rented Tenancy Agreement commenced 7th September 2020.
16. A deposit of £400 was paid on 9th November 2020.
17. The deposit was lodged with Safe Deposit Scotland on 9th January 2023 which is outwith 30 days from the start of the tenancy. This is a breach of the regulations. It is noted that the deposit was not received until after the tenancy started. The deposit was not put into a scheme within 30 days of receiving it.
18. The Respondents only let out this property. They are trying to gain an order for eviction to allow them to sell the Property. They will removed themselves from the Landlord Register once they have sold the Property.
19. The Respondents acted on advice that they received from a solicitor years ago. This advice was incorrect. They had thought that the advice from the solicitor was correct.
20. The Respondents admit that they did not follow the Regulations and place the deposit in a deposit scheme within 30 days of receiving the deposit (noting that it was received after the tenancy started).

Decision

21. The Respondents have a duty under Regulation 3 to place the deposit in an approved scheme within the specified time but failed to do so. The Respondents did engage with the Tribunal process to explain why the deposit was late, the deposit had been lodged in a deposit scheme and they were looking to sell the Property to allow them to stop being landlords. They had acted on incorrect advice from a solicitor. It was reasonable that they would believe the advice of a solicitor. The Tribunal decided that a fair, just and proportionate sanction would be to order the Respondents to pay the Applicant the amount of £300.00 (THREE HUNDRED POUNDS)

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.

G. Miller

1st March 2024

Legal Member/Chair

Date