

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 Regulation 3,9 &10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”)

Chamber Ref: FTS/HPC/PR/20/2678

Re: Property at 85 Western Road Flat 2, Aberdeen, AB24 4DR (“the Property”)

Parties:

Anojan Sriskandarajah, Mr Victor Heaulme, 45 Northolt Avenue Ruislip, Middlesex, HA4 6SS; 5 Beaconsfield Mews, Aberdeen, AB154DJ (“the Applicants”)

Diamond Property Developments LTD, 50 Hammerman Drive, Aberdeen, AB24 4SH (“the Respondent”)

Tribunal Members:

Susan Christie (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Payment be made for the Respondent to make payment to the Applicants in the sum of £810.

Background

1. The First Applicant made the application to the Tribunal on 29 December 2020. It is made under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”).
2. The Notice of Acceptance of the application by the Tribunal is dated 22 January 2021.
3. The Respondent advised the Tribunal on 25 February 2021 that it was being represented by Aberdeen Property Leasing.
4. Written Representations were provided by the Respondent’s Representative on 17 February 2021.
5. On 3 March 2021, the Applicant intimated to the Tribunal that Mr Sriskandarajah is to be included in the Application as a second Applicant.

Case Management Discussion (CMD)- 3 March 2021, by conference call

6. Both Applicants participated along with the Respondent and the Respondent's Representative.
7. The Respondent/Representative had no objection to Mr Sriskandarajah being included in the Application as a second Applicant.
8. I agreed a partial timeline of events with the Parties. The detailed discussions-
 - a) A Private Residential Tenancy (PRT) over the Property was entered into between the Applicants and the Respondent landlord. The Respondent's Representative is named as the letting agent. The start date of the tenancy being 10 July 2020.
 - b) The Scottish Government Model Private Residential Tenancy Agreement (PRTA) was used. Part 11 deals with the Deposit. One was taken of £1350, and the Scheme Administrator is specified as Safe Deposit Scotland ("the Scheme").
 - c) The deposit was received on 24 June 2020 and was paid to the letting agent.
 - d) The agreement between the Respondent and the Respondent's Representative as its letting agent required the letting agent to process the first month's rent payment, and to register the deposit with the Scheme.
 - e) The Deposit was received by the Scheme on 23 October 2020.
 - f) The PRT ended on 10 December 2020.
 - g) The Deposit has not yet been paid back to the Applicants as a dispute is outstanding regarding certain deductions the landlord wishes deducted. The Applicants dispute some of the headings of claim but accept others. It has been raised with the Scheme but is unresolved as yet.
9. The Applicants submissions are set out in writing within the papers. In summary they consider there was a breach of regulation 3. They seek a remedy from the Tribunal under regulation 10, in that the Respondent failed to pay the deposit into an approved scheme within 30 working days of the beginning of the tenancy.
10. The Respondent's submissions are also set out in writing within the papers. Whilst some of the information contained there was discussed, those discussions are not at an end. Further information might be given before any decision is made.
11. It seemed that prior to me deciding, the ancillary matter of return of the deposit in part or in full might be regarded as something I could consider if I decided there was a breach of the Regulations and when deciding on the level of a penalty.
12. Accordingly, the Parties wished the opportunity to correspond in writing by e mail to try to resolve the payment around the deposit and any deductions, prior to me deciding the application made under Rule 103. I agreed to continue the CMD to a later date.
13. The CMD was adjourned to 31 March 2021 at 2p.m. for a further CMD by Conference call.

The Second Case Management Discussion (CMD)- 31 March 2021

14. Both Applicants participated along with the Respondent and the Respondent's Representative.
15. I was advised that since the last CMD that the Deposit itself had been repaid in full to the Applicants because of discussions. I was further advised that the Respondents Representative had compensated the Respondent of £700 representing the deduction from deposit figure that had been partially in dispute.
16. The Applicants had observations that they wished to be noted by the Tribunal. In summation: The Applicants were sceptical that this was a one off occurrence. They considered there was too long in between system routine reports even if they accepted what had been said by the letting agent about how the glitch had come about. They were disappointed that the letting agent did not own up to them if there had been a mistake at the earliest possible moment and simultaneously the Scheme Administrator. They had been put to considerable inconvenience in resolving the payment of the Deposit. They felt the lack of response to their e mails and the delays thereafter had highlighted that they had ample opportunity to attend to matters but had not done so. They had been then told that the deposit was to be dealt with by the landlord himself. The Applicants did not consider this application to be about making a financial gain but instead felt that it was a step needed to force the issue of return of the deposit and that it had not been a victimless breach as the deposit had been unsecured for a period and the dispute over the return of the deposit itself had financial implications for them especially when they were trying to move on. The second Applicant had still not re-rented as he relied on the return of this deposit to pay his next one. They had suffered stress in preparing this case and had also obtained legal advice. Relations had broken down with the landlord himself and they felt he had pressured them. They felt overall they had been treated poorly.
17. The Respondent's Representative provided further information to the Tribunal. In summation they take full responsibility for the error. The full deposit had been repaid in the intervening period and they had mediated to allow that to happen and had also compensated the landlord. Senior staff had been involved in assessing what had gone wrong in this case. They are one of the three largest letting agents in Aberdeen and are well experienced. The deposit had been in the client account too long. It was an isolated incident. Staff had been furloughed over the last year and those who were working were working remotely. They had identified it as a flaw with a default setting on their property package system. The deposit had not come to light as not being lodged until much later. The system default setting had now been changed, they had done a complete cleanse of the system and checked other cases. They had two dedicated staff dealing with deposits who had been further trained to avoid any re-occurrence. They apologised to the Applicants for the delay itself and for also not apologising earlier. They would look at their processes again.
18. The Respondent stated in summation that he felt he had tried to deal with the Applicants in an amicable fashion and had not intended any hostility. He felt there was an implied financial gain being sought. He considered his company

to provide high end properties that had won awards and had never had such a problem before.

The Regulations

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.*

[

(1A) Paragraph (1) does not apply—

- (a) where the tenancy comes to an end by virtue of section 48 or 50 of the Private Housing (Tenancies) (Scotland) Act 2016, and*
- (b) the full amount of the tenancy deposit received by the landlord is returned to the tenant by the landlord,*
within 30 working days of the beginning of the tenancy.

]1

(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.

[

(2A) Where the landlord and the tenant agree that the tenancy deposit is to be paid in instalments, paragraphs (1) and (2) apply as if—

- (a) the references to deposit were to each instalment of the deposit, and*
- (b) the reference to the beginning of the tenancy were to the date when any instalment of the deposit is received by the landlord.*

]2

(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—

- (a) in respect of which the landlord is a relevant person; and*
- (b) by virtue of which a house is occupied by an unconnected person, unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.*

(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.

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.*

Findings in Fact

- I. A Private Residential Tenancy (PRT) over the Property was entered into between the Applicants and the Respondent landlord. The Respondent's Representative is named as the letting agent. The start date of the tenancy being 10 July 2020.
- II. The Scottish Government Model Private Residential Tenancy Agreement (PRTA) was used. Part 11 deals with the Deposit. One was taken of £1350, and the Scheme Administrator is specified as Safe Deposit Scotland ("the Scheme").
- III. The deposit was received on 24 June 2020 and was paid to the letting agent.
- IV. The agreement between the Respondent and the Respondent's Representative as its letting agent required the letting agent to process the first month's rent payment, and to register the deposit with the Scheme.
- V. The Deposit was received by the Scheme on 23 October 2020.
- VI. The PRT ended on 10 December 2020.
- VII. The deposit was not paid into an approved Scheme within 30 days of the beginning of the tenancy.

Reasons for Decision & Decision

I was satisfied that I could decide without hearing evidence, as the facts were sufficiently agreed, and the Parties agreed that they were happy for me to decide today.

I did not consider this was contrary to the interests of the Parties.

It was clear that the circumstances surrounding the dispute over return of the deposit itself had caused tensions between them as well as the late lodging of the deposit in the approved scheme.

Parties accepted that their differing viewpoints were not facts as such for me to find, but I could appreciate their differing positions and how the Applicant's felt the matter could have been better handled when the problem had arisen.

There was an agreed timeline for me to find in fact.

The new PRT tenancy commenced on 10 July 2020. The deposit of £1350 had been paid before that. Under ordinary circumstances and when applying regulation 3 (1) (a) and (b), the duty on the landlord, in this case would be to comply with its terms within 30 working days of the beginning of the tenancy. It was not secured in the approved scheme, until 23 October 2020 in breach of that regulation.

I then had to consider what amount my order was to be fixed at under regulation 10. In so doing I reflected on the position of the Applicants, the explanations given by the

letting agent and the fact that the Respondent had a contractual arrangement with the letting agent who had the responsibility of depositing the money into the approved scheme for him. It seemed to me that the risk had been to the Applicants who had the deposit unprotected from the outset of the tenancy until 23 October 2020. This was roughly three months from when it had been originally paid. The tenancy itself lasted five months. I am satisfied, having regard to the circumstances of this case and the terms of the Regulations an Order for the Respondent to pay the Applicants £810, should be made. This is the equivalent of an apportionment equating to three months during which the deposit lay in an account of the letting agent out of a total tenancy period of five months when it was unprotected. I considered that the error was entirely due to the letting agent's systems or processes as opposed to the landlord himself, but nevertheless the risk was left with the Applicants. In terms of the regulations the technical liability rests with the landlord albeit he may have had a contractual arrangement with the letting agent. This is not compensatory; it is a sanction.

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: Susan Christie

Date: 31 March 2021