

Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”) and Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/PR/20/1361

Re: Property at Flat 2/2, 76 Buccleuch Street, Glasgow, G3 6PG (“the Property”)

Parties:

**Mr Daniel Tebano, Flat 2/2, Flat 3/1, 3 Bellisle Street, Govanhill, Glasgow, G42 8HL
 (“the Applicant”)**

Mrs Reshna Begum, 28 Hawthorn Way, Cambuslang, Glasgow, G72 7AF (“the Respondent”)

Mr Moby Rahman and Mr Raju Rahman, 28 Hawthorn Way, Cambuslang, Glasgow, G72 7AF (“The Respondent’s Representative”)

Tribunal Member:

Ms. Susanne L. M. Tanner Q.C., Legal Member and Chair

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that an order must be made in terms of Regulation 10 of the 2011 Regulations requiring the Respondent to pay to the Applicant the sum of ONE HUNDRED AND FIFTY POUNDS (£150.00) Sterling

1. Procedural background

- 1.1. On 9 June 2020, the Applicant made an application (“the Application”) to the tribunal in terms of Rule 103 of the 2017 Rules, namely an application for an

order for payment where the landlord (Respondent) has failed to carry out duties in relation to tenancy deposits.

1.2. The Applicant attached to the Application:

1.2.1. A Private Residential Tenancy agreement;

1.2.2. A Deposit Protection Certificate from Safe Deposits Scotland
DAN523445

1.3. On 1 July 2020, the Application was considered by a legal member acting with the delegated power of the President. Further information was requested from the Applicant, namely, confirmation as to whether the tenancy had ended and if so, the date of termination of the tenancy and confirmation of when the deposit of £400.00 was paid to the Landlord, with evidence to support the payment date.

1.4. On 22 July 2020, the Applicant responded and stated that the tenancy had ended on 30 April 2020. He attached a PDF of his bank statement for September 2019 which showed a payment to Mr M Rahman of £400.00 on 10 September 2019.

1.5. On 31 July 2020, the Application was accepted for determination.

1.6. On 31 July 2020, the tribunal's administration asked the Applicant whether he was content for his unredacted bank statement to form part of the Application documentation and to be crossed over to the other party when case papers are issued. After initially stating that he would provide a redacted version, the Applicant then gave consent for the statement to be crossed over.

1.7. On 31 July 2020, the tribunal notified the parties that the Application had been referred to the tribunal and that a Case Management Discussion ("CMD") teleconference had been fixed for 21 August 2020 at 1130 which both parties were required to attend. Parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application. Parties were advised that if they did not attend the CMD, this would not stop a decision or order from being made by the tribunal if the tribunal considered that it has sufficient information before it to do so and the procedure has been fair. The Respondent was invited to submit any written representations she wished by 14 August 2020. The Application paperwork and notification of the teleconference was served on the Respondent by Sheriff Officers on 3 August 2020.

1.8. On 6 August 2020, the tribunal issued a Direction requiring both parties to comply with the orders therein.

1.9. On 13 August 2020, the tribunal received notification that the Respondent had appointed a Representative, her son Mr Raju Rahman. He submitted a Direction response in which it was accepted that the Applicant's deposit was lodged late.

1.10. On 14 August 2020, the Applicant submitted a Direction response and an additional document, which was an email from him to Mr Moby Rahman dated 10 November 2019, asking which tenancy deposit scheme his deposit of £400.00 was being held in as it had been more than 30 days since he moved into the Property.

1.11. On 17 August 2020, the Applicant submitted a further email stating that the end date of the tenancy was 31 March 2020. He also provided a response to the Respondent's Representative's submissions.

2. Case Management Discussion ("CMD") – 21 August 2020 at 1130h – by teleconference

2.1. The Applicant attended the teleconference.

2.2. Mr Moby Rahman appeared as a Representative for the Respondent. He notified the tribunal that he was appearing today on behalf of his mother and that his brother Mr Raju Rahman, who had submitted the written response to the Direction was also a representative but was not present today. He stated that Mr Raju Rahman was available by email if further information was required during the CMD.

2.3. The tribunal chair explained the nature and purpose of the CMD.

2.4. Applicant's submissions

2.5. The Applicant stated that the tenancy commenced on 17 September 2019 and that the end date of his tenancy was 31 March 2020 and not 30 April 2020. He stated that he sent a deposit of £400.00 to Mr Moby Rahman on 10 September 2019 and that the lease was signed on 17 September 2019.

2.6. He stated that all of his dealings in respect of the tenancy had gone through Mr Moby Rahman and that he had not had any dealings with the Respondent or Mr Raju Rahman.

- 2.7. In relation to the Deposit Protection Certificate, it was noted that the certificate states that the deposit was protected on 20 November 2019 but at the time that the certificate was printed it showed a zero balance. The Applicant was unsure of the reason for this. He stated that at the end of the tenancy the deposit was returned through the scheme. The only notification that he got from Safe Deposits Scotland was to advise him that his deposit had been paid in late and that he could apply to the tribunal. That email was received shortly after the tenancy was over.
- 2.8. He stated that during the tenancy, he sent an email to Mr Moby Rahman to ask which deposit protection scheme his deposit was protected with as he knew that this was a normal procedure with deposits and he had not been notified by Mr Moby Rahman as to where the deposit had been kept, therefore he decided to email him and ask. He did not receive an answer to that email. Generally, Mr Moby Rahman never replied to emails. He sent short, casual texts which were not professional.
- 2.9. Mr Tebbano stated that he has not received the Regulation 42 information about deposit protection from the Respondent or her representatives at any time.
- 2.10. Mr Tebbano stated that it was frustrating that all the communication was done via text, stating that one cannot have any proper evidence of any messages coming at a particular date and time. He stated that it was always disappointing that whenever he sent an email he never got a serious response, often a reply like "call me". When he sent the email asking about where his deposit was being kept it would have been nice to receive information back in return. He just received messages from Safe Deposits Scotland stating that his deposit had gone in. No apology was offered by the Respondent or her sons before the tribunal proceedings were raised. He does not believe that illness is an appropriate excuse for the failure. There should be a straightforward responsibility for the landlord.
- 2.11. Mr Tebano stated that the re-payment from Safe Deposits Scotland came through on 4 June 2020 to his bank account.
- 2.12. Mr Tebano stated that he is seeking the full amount of three times the deposit as he thinks that that is fair. He stated that Safe Deposits Scotland had emailed on 18 April 2020 and stated that he could take action up to three times the amount of the deposit.

2.13. Mr Tebbano stated that there had been issues with furniture in the Property. He stated that he could not believe the general lack of professionalism coming from a landlord who was advertising a furnished room.

2.14. He stated that he was living in the property at the same time as Mr Matthew Major was in another property in the same building. He stated that Mr Major has made a separate application in respect of alleged failures in relation to his tenancy deposit.

2.15. Respondent's Representative's submissions

2.16. Mr Rahman stated that his brother Mr Raju Rahman dealt with Safe Deposits Scotland and had the log in details. He stated that the Applicant's money was paid into the scheme on 20 November 2019. He stated that he does not have the log in details for the scheme. He stated that Mr Raju Rahman had made enquiries with Safe deposits Scotland and they had confirmed that the deposit was paid on 20 November 2019. He stated that the zero figure on the certificate which has been lodged probably reflected the fact that no money is protected now that deposit has been repaid to the Applicant and the account has been closed.

2.17. Mr Rahman stated that he did provide the Deposit Protection Certificate after the deposit was lodged but he was not aware that they had to issue any other information in a separate document in addition to that. He stated that this was his mother's only property. He stated that when they put the money into the scheme, Mr Tebano knew that the money was paid in slightly late and they explained the situation to him. He stated that the Mr Tebano was aware of the amount of deposit, the date it was paid in and the scheme from the Deposit Protection Certificate which was issued.

2.18. By way of explanation for the late lodging, Mr Rahman stated that at that time in September 2019, his mum was unwell. She has heart problems. She has medications for her heart rate. He stated that his brother Raju and he were trying to help and support her with the management of the tenancy. He stated that he thought that Raju had paid it in and there was a miscommunication between them. Once they realised money was not paid into the scheme we paid it. He stated that the money was secure in a bank account until it was paid in. He stated that the Applicant did get his full money back. They apologise that we were late. There was oversight. That was missed. He is not saying that the illness was the main part of it. There was a miscommunication. He and his brother do not have any other rental properties.

2.19. He stated that he had no recollection of receiving the email to which Mr Tebano had referred to sending to him on 10 November 2019. He stated that he did not recall receiving any emails from the tenant asking where the deposit was lodged. He did not think that any such email was the reason for the deposit being lodged on 20 November 2019. He did not recall what prompted them to lodge the deposit on 20 November 2019.

2.20. Mr Rahman stated that he would like it to be taken into account that the money was lodged late but it was paid into a scheme. He stated that in his submission there is no loss to the Applicant as he received his full deposit back.

2.21. Adjournment

2.22. The tribunal adjourned in order that both parties could produce the documents referred to in their submissions; and in order that the legal member could deliberate thereafter.

2.23. The Applicant produced a copy of the email dated 10 November 2019 and it was crossed over to the Respondent's Representative.

2.24. The Respondent produced two screen shots from My Deposits Scotland to confirm that the whole deposit was paid back to the Applicant after the end of the tenancy.

2.25. Following the adjournment, the tribunal reached a decision on the Application.

3. Findings in Fact

3.1. The Applicant and the Respondent entered into a private residential tenancy agreement for the Property which started on 1 September 2019.

3.2. On 10 September 2019 the Applicant paid a deposit to the Respondent's son, Mr Moby Rahman, as required in the tenancy agreement.

3.3. On 10 November 2020, the Applicant sent an email to Mr Moby Rahman, the Applicant's Representative, asking him to confirm which tenancy deposit scheme his £400.00 was being held in as it had been more than 30 days since he had moved into the Property.

3.4. The Applicant did not receive any reply from Mr Moby Rahman to his email.

- 3.5. The deposit was paid into Safe Deposits Scotland on 20 November 2020 and it should have been paid on 13 October 2020, therefore it was 38 days late.
- 3.6. The reason for the late lodging was oversight on the part of Mr Moby Rahman and his brother Mr Raju Rahman, who dealt with some tenancy matters on behalf of their mother, the Respondent.
- 3.7. A Deposit Protection Certificate was issued to the Applicant from the tenancy deposit protection scheme.
- 3.8. The prescribed information in terms of Regulation 42 of the Regulations was not issued to the Applicant by the Respondent at any time.
- 3.9. After the end of the tenancy, the Applicant applied to the tenancy deposit protection scheme for refund of his deposit.
- 3.10. The full deposit was refunded to the Applicant via the tenancy deposit protection scheme.
- 3.11. Mr Moby Rahman apologised during the tribunal proceedings for the late lodging and failure to provide the prescribed information.

4. Discussion

- 4.1. The tribunal took account of the Applicants' written and oral submissions; and the Respondents' written and oral submissions.
- 4.2. In assessing the appropriate amount for a payment order, the tribunal had regard to the fact that the Applicant's deposit was unprotected for a relatively short period at the start of the tenancy and that the deposit had been protected from 20 November 2019 until the end of the tenancy. The tribunal also took account of the fact that the prescribed information had not been provided to the Applicant at any time. The tribunal took account of the Respondent's Representative's position that the failure had been due to oversight and the matter had been rectified once the failure was recognised.
- 4.3. For the reasons outlined and on the basis of the findings in fact, the tribunal decided to make an order for payment by the Respondent to the Applicant of the sum of £150.00. That sum was considered to be reasonable in all of the circumstances.

4.4. The tribunal chair informed the parties that the Payment Order could be enforced by the Applicant against the Respondent after the expiry of the permission to appeal period.

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.

21 August 2020

**Ms. Susanne L M Tanner Q.C.
Legal Member/Chair**