

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under The Tenancy Deposit Schemes
(Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/23/1294

Re: Property at Flat 3, 17 St Triduanas Rest, Edinburgh, EH7 6NF (“the Property”)

Parties:

Mr Skye Fuller, Miss Vanessa Farina, Flat 3, 17 St Triduanas Rest, Edinburgh, EH7 6NF (“the Applicants”)

Mr Kwadwo Asare, Ms Dominica Starzynska-Asare, 10 Cite Au Bois, Shiedgen, L6250, Luxembourg; 10 Cite Au Bois, Shiedgen, L6250, Luxembourg (“the Respondents”)

Tribunal Members:

Ms H Forbes (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be made in favour of the Applicants in the sum of £1350.

Background

1. By application received in the period between 20th April and 2nd May 2023, and made under Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Rules”), the Applicants applied for an order in terms of Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”).
2. The Applicants lodged a document entitled ‘Rent Agreement’, which was a tenancy agreement between the parties that commenced on 16th October 2021. The Applicants also lodged confirmation of tenancy deposit protection dated 13th March 2023 in respect of the tenancy deposit of £900 paid by the Applicants at the start of the tenancy, and correspondence from the Respondents dated 12th January 2023, purportedly giving notice to leave.

3. A Case Management Discussion set down for 6th July 2023 was cancelled due to issues with service of paperwork upon the Respondents.
4. Notification of a further Case Management Discussion was served upon the parties by letter dated 14th August 2023.
5. By email dated 31st August 2023, the Respondents lodged written representations.
6. By email dated 8th September 2023, the Respondent, Mrs Asare, nominated Mr Asare to be her representative.

The Case Management Discussion

7. A CMD took place by telephone conference on 13th September 2023. The Applicants were not in attendance and were represented by Ms Natasha McGourt, Granton Information Centre. The Respondent, Mr Asare, was in attendance and representing Mrs Asare.
8. Ms McGourt provided the background to the application, stating that the deposit was lodged 17 months after the tenancy started, at which time the Respondents also registered as landlords. The Respondents had attempted to serve notice to leave in March 2023, at which time they must have become aware of their responsibilities. It was the Applicants' position that the reason the Respondents had retained responsibility for paying council tax, rather than passing the responsibility to the Applicants as tenants, was because they were trying to hide the fact that they were landlords.
9. Responding to questions from the Tribunal, Ms McGourt said the Applicants were seeking an award of three times the tenancy deposit, but they accepted that the amount of the award was a matter for the discretion of the Tribunal.
10. Mr Asare said the Respondents did not know that they should have lodged the tenancy deposit or registered as landlords. Mr Asare had been renting property as a student in Edinburgh since 2004, and there was no tenancy deposit scheme at that time. The Respondents bought the Property in 2009. It was their family home until around the time of the Covid-19 pandemic. They decided to let the Property then, as they were leaving the country. The tenancy agreement was based on trust. The parties did not meet face-to-face initially. When the travel ban lifted, the parties met and the Respondents discovered the Applicants were sub-letting without permission. It was the Respondents' position that the Applicants refused to ask for permission for future sublets, so they served notice upon the Applicants. The Respondents accepted their notice was not valid, and it was withdrawn. They have since served a notice to leave on the grounds that a family member intends to live in the Property. Mr Asare denied that the Respondents were trying to hide from their landlord duties by paying the council tax on the Property. They had been paying it, and continued to do so as legally required.

11. Responding to questions from the Tribunal as to how the Respondents became aware of their obligations, Mr Asare said they took legal advice on ending the tenancy and became aware at that time. As soon as they became aware of the tenancy deposit scheme, they lodged the deposit.
12. Mr Asare said an award of three times the tenancy deposit was excessive. He was content to leave the decision to the Tribunal, but pointed out that the deposit was kept in the Respondents' account and was not at risk. The Applicants had not suffered any losses and had not made any enquiries about the deposit.
13. Ms McGourt said notice to leave has now been served on the basis of selling the Property, so different reasons have been given by the Respondents for serving notice to leave, and this will be raised during the eviction proceedings. It is the Applicants' position that they had permission to sublet.

Findings in Fact and Law

14.
 - (i) The parties entered into a private residential tenancy agreement in respect of the Property that commenced on 16th October 2021.
 - (ii) A tenancy deposit of £900 was paid to the Respondents by the Applicants at the commencement of the tenancy.
 - (iii) The deposit was not lodged with an approved tenancy deposit scheme within 30 days of the commencement of the tenancy.
 - (iv) The deposit was lodged with an approved tenancy deposit scheme on 13th March 2023.
 - (v) The Respondents have breached Regulation 3 by failing to pay the deposit into an approved tenancy deposit scheme timeously.

Reasons for Decision

15. The Regulations were put in place to ensure compliance with the tenancy deposit scheme, and to provide the benefit of dispute resolution for parties. The Tribunal considers that its discretion in making an award requires to be exercised in the manner set out in the case *Jenson v Fappiano (Sheriff Court (Lothian and Borders) (Edinburgh) 28 January 2015* by ensuring that it is fair and just, proportionate and informed by taking into account the particular circumstances of the case. The Tribunal must consider the facts of each case appropriately.
16. The Tribunal took guidance from the decision of the Upper Tribunal UTS/AP/19/0020, where it was stated '*Cases at the most serious end of the*

scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals.'

17. The Tribunal considered this to be a serious matter, given that the Applicants' deposit was not lodged with an approved tenancy deposit scheme as required by Regulation 3, and remained unprotected for a period of 17 months. The Tribunal took into account the fact that there was no actual loss to the Applicants, and they will now have the benefit of dispute resolution at the end of the tenancy.
18. The Tribunal took into account the Respondents' mitigating circumstances, namely that they were inexperienced landlords, who let the Property at a difficult time at the start of the Covid-19 pandemic. The Tribunal took into account the fact that the deposit is now lodged and protected.
19. However, the Tribunal considered that ignorance of the law is no defence, and the Respondents ought to have investigated the responsibilities and duties of a landlord, including landlord registration and tenancy deposit obligations, before committing to letting the Property. The fact that the Respondents served an invalid notice to leave upon the Applicants was further evidence of their failure to take their landlord responsibilities and security of tenure seriously, and ensure the correct legal procedure was followed. The Applicants were entitled to have confidence that the Respondents would comply with their duties as landlords.
20. Taking all the circumstances into account, the Tribunal decided it would be fair and just to award a sum of £1350 to the Applicants, which equates to one and a half times the deposit.

Decision

21. The Tribunal grants an order against the Respondents for payment to the Applicants of the sum of £1350 in terms of Regulation 10(a) of The Tenancy Deposit Schemes (Scotland) Regulations 2011.

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

13th September 2023
Date