



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under The Tenancy Deposit Schemes (Scotland) Regulations 2011 as amended by The Tenancy Deposit Schemes (Scotland) Amendment Regulations 2019. (“the Regulations”).

Chamber Ref: FTS/HPC/PR/20/0954

Re: Property at 86B Crown Street, Aberdeen, AB11 6ET (“the Property”)

Parties:

Miss Tara Hector, 5 Provost Stewart Place, Stonehaven, AB39 2GA and Miss Sophie Johnston, Rockstone House, Banchory-Devenick, Aberdeen, AB12 5YD (“the Applicants”)

Mr Steve Easton, 15 Burnett Road, Banchory, Aberdeen, AB31 5SD (“the Respondent”)

Tribunal Member:

Martin McAllister (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent pay the sum of One Thousand One hundred and twenty five pounds (£1,125) to the Applicant.

Background

On 19th March 2020 the Tribunal received an application from the Applicants seeking payment of a sum in compensation under regulation 10(a) of the Regulations.

The date of the case management discussion was intimated to the Respondent. Neither party made written representations.

A case management discussion was held on 18th August 2020. It was held by audio conferencing because of the current public health emergency. The Legal Member set out suggested protocols for the case management discussion and he also explained the purpose of a case management discussion.

The Tribunal had regard to the following documents:

1. Application received 19th March 2020;
2. Private Residential Tenancy Agreement dated 15th July 2019;
3. Emails between the parties;
4. Receipt from letting agent in respect of the deposit paid.
5. Emails from three approved deposit schemes confirming that the deposit had not been lodged in an approved tenancy deposit scheme.

The Law

The Tenancy Deposit Schemes (Scotland) Regulations 2011

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.

(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.

(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.

9. (1) A tenant who has paid a tenancy deposit may apply to the sheriff 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 by summary application and must be made 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 sheriff—

(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 sheriff 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.

Case Management Discussion

Miss Johnston and Miss Hector were present as was Mr Steve Easton.

Findings in Fact

- 1. The Applicants and the Respondent were parties to a Private Residential Tenancy Agreement for the Property.**
- 2. The tenancy commenced on 15th July 2019 and came to an end on 24th December 2019.**
- 3. The Applicants paid a tenancy deposit of £675 to the Respondent.**
- 4. The Respondent did not lodge the deposit with an approved tenancy scheme.**
- 5. The Respondent has returned £144 of the deposit to Miss Hector.**

Reasons

Parties helpfully set out what was agreed between them:

Parties entered into a private residential tenancy agreement for the Property with a commencement date of 15th July 2019.

A rental deposit of £675 was paid to the Respondent by the Applicant.

The rental deposit was not paid into an approved tenancy deposit scheme.

The tenancy came to an end on 24th December 2019.

Mr Easton was candid in stating that he did not lodge the deposit with an approved tenancy deposit scheme. He said that he has four letting properties. He said that, at the time the tenancy for the Property commenced, he was in the process of changing from a managed arrangement with his letting agent to that of a non-managed contract. He said that this was the reason the deposit was not dealt with in the appropriate manner. He did accept that the deposit was sent to him by the letting agent around one month after the tenancy started. He described what had happened as an “admin error.” He explained that, had he still had a fully managed contract with the letting agent, it would have dealt with all matters regarding the deposit.

Miss Johnston said that she became concerned about the deposit when she made an enquiry of the Respondent and he failed to provide a substantive response to her query for a period of fifty six days. Mr Easton said that it had taken some time to deal with arranging cleaning and other matters regarding the Property including replacement of a hob. He said that he totalled up all the costs and offered to split the balance and pay half to each of Miss Johnston and Miss Hector. He said that Miss Hector provided her bank details and she confirmed to the Tribunal that she received £144 in February 2020. Mr Easton said that he did not receive the requisite bank details from Miss Johnston and she explained to the Tribunal that she thought that acceptance of the sum would have complicated matters because of the application to the Tribunal. Miss Johnston said that she would provide the bank details to Mr Easton and he said that he would make the payment to her.

Mr Johnston said that she was concerned about the deductions made from the deposit and said that matters had been made more difficult because they had not been provided with an inventory at the outset of the tenancy. Miss Johnstone set out other concerns which she had such as being charged for bedding and Mr Easton disputed that there were any deductions which had been inappropriately made.

Mr Easton said that he felt quite frustrated that the application had been made especially since the tenancy was of such a short duration.

The Respondent accepted that the tenancy deposit had not been lodged with an approved tenancy deposit scheme and the Tribunal therefore saw no reason for not determining the matter at the case management discussion rather than adjourning to a Hearing.

The Sanction

The creation of regulations to cover tenancy deposits was to protect tenants' funds and provide a structured process of dispute resolution. The reasons for such a scheme were demonstrated by this application. The Respondent received £675 as a deposit but did not lodge it with an approved deposit scheme.

The Applicants had concerns about the deductions made from the deposit. Had the deposit been with an approved tenancy deposit scheme, a third party would have been able to adjudicate on these issues. The Applicants were left without protection of their funds for the whole of the tenancy.

The Regulations are clear in stating that, where there is a breach such as this, the Tribunal must make an order requiring a Landlord to pay a Tenant a sum not exceeding three times the amount of the tenancy deposit. The amount is a matter of judicial discretion and must reflect what is a fair, proportionate and just sanction, having regard to the purpose of the Regulations and the gravity of the breach. It is a balancing act.

In this particular case, the Tribunal had regard to the fact that the deposit was unprotected for the whole period of the tenancy which amounted to one hundred and seventy seven days. It also had regard to the fact that there was some time before the deposit was returned and indeed that the Applicants had concerns about the deductions made from the deposit and were denied the opportunity of an adjudication service which a tenancy deposit scheme would have provided.

The Tribunal had regard to and adopted the approach of the Court in *Russell-Smith and Others v Uchegbu* (2016) SC EDIN 64 where the Sheriff had effectively stated there to be two broad aspects to the sanction. The first was the period of time the deposit was unprotected and the second is a sum to reflect a weighting taking into account the particular circumstances of the case including the landlord's experience etc.

The deposit was unprotected for the whole period of the tenancy and for a period beyond its end. It is considered that the appropriate starting point for the sanction should therefore be £675.

The Applicants did not have the advantage of a third party adjudicating in circumstances such as this when they did not agree with deductions made from the deposit. The Tribunal had no reason to doubt the Respondent's position that the failure to lodge the deposit with an appropriate scheme was connected with the change he made to the contractual arrangements he had with his letting agent. The Respondent was, however, a commercial landlord and he accepted that he had received payment of the deposit around a month after the tenancy had commenced. The Tribunal considered that the financial penalty to reflect this second aspect is fairly set at £450.

The Tribunal determined to make an Order requiring the Respondent to pay the sum of £1,125 to the Applicants.

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.

Martin McAllister

Martin J. McAllister, Legal Member
18th August 2020