



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

Chamber Ref: FTS/HPC/PR/20/1830

Re: Property at Flat 6/3, 101 Maxwell Street, Glasgow, G1 4EP (“the Property”)

Parties:

Mr Rory Martin, Ms Jade Ayd, 198 Colinton Road, Edinburgh, EH14 1BP; 17 Rue Cuvier, 92500, Rueil-Malmaison, France (“the Applicants”)

Mr Simone Guasti, Ms Cristina Ciucci, 7 Moncrieff Avenue, Lenzie, G66 4NL (“the Respondents”)

Tribunal Members:

Graham Harding (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicants were entitled to an order for payment by the Respondents in the sum of £1500.00.

Background

1. By application dated 31 August 2020 the Applicants complained to the tribunal that the Respondents were in breach of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (the 2011 Regulations) and sought an order for payment. The Applicants submitted a copy of the Tenancy Agreement, evidence of the end of the tenancy, and supporting documentation.
2. By Notice of Acceptance dated 3 September 2020 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned.
3. Intimation of the Case Management Discussion was given to the Applicants by post and to the Respondents by Sheriff Officers on 1 October 2020.

4. By email dated 20 October 2020 the Respondents submitted written representations to the Tribunal.

The Case Management Discussion

5. A Case Management Discussion was held by teleconference on 29 October 2020. The parties all attended personally.
6. It was agreed that the parties entered into a Private Residential Tenancy that commenced on 1 September 2019 and ended on 31 August 2020. The rent was £2475.00 per quarter. The deposit paid at the commencement of the tenancy was £750.00. The deposit was paid to Safe Deposits Scotland and was protected from 7 September 2020.
7. The Respondents explained that they had registered the deposit but not paid it to Safe Deposits Scotland on 28 August 2019. It was said by Ms Ciucci that she had not appreciated that by registering the deposit it had not been secured. She confirmed the funds had remained in the Respondents bank account. She said that there had been reminder emails sent by Safe Deposits Scotland but these had gone to her email trash bin and she had not seen them. She said the Respondents only became aware of a problem when the Applicants requested she contact Safe Deposits to authorise the refund of their deposit on 17 August 2020.
8. Ms Ciucci said that on realising the problem the Respondents had offered the Applicants their deposit back plus an additional two weeks rent but the Applicants had refused this and had insisted the deposit be lodged in a scheme.
9. Ms Ciucci confirmed there had been issues of flooding in the property from an upstairs property on four occasions which had led to the Applicants leaving the property although the Respondents' insurers had said the property was habitable.
10. Ms Ciucci said that she had had not realised the difference between registering the property and securing the deposit. She said the Respondents were now more familiar with the system. The Respondents went on to say that they had been landlords since about 2002 but at that time the rules were different and they had not needed to lodge deposits in a scheme. They said they currently had three properties although only two were rented. They confirmed that they had not lodged any deposits in a scheme for any of the properties until September this year. They said they had always acted in good faith with their tenants and there had been no issues in the past. They had not been aware of the regulations.
11. The Respondents accepted they were in breach of Regulation 3 of the 2011 Regulations and that the Tribunal was obliged to impose a financial sanction. By way of mitigation the Respondents submitted that as soon as they realised the breach, they offered to pay the deposit plus two weeks rent straight away. This would have minimised any inconvenience to the Applicants. They

submitted they had been good landlords and had a good relationship with the Applicants throughout the tenancy and had never intended to withhold the deposit and had always acted in good faith. They suggested that if the Applicants had made them aware sooner of their mistake, they would have rectified it straight away.

12. For the Applicants Mr Martin said he had been shocked in August to discover that the deposit had not been lodged in a scheme but had been even more shocked to discover that although the regulations had been in force since 2012 that the Respondents had never lodged any deposits in a scheme.
13. Mr Martin said he found it hard to believe that the Respondents had been unaware that the deposit of £750.00, which was a substantial sum, remained in their bank account.
14. Mr Martin also explained that when the Applicants had first engaged with the Respondents as regards renting the property, they had been unable to find them as registered landlords and had to point this out to them.
15. Mr Martin also submitted that the Applicants had been left in a position on leaving the property that they did not for some time thereafter have funds to put down as a deposit on another property and also due to the Covid pandemic it was difficult to view suitable properties and he and his partner were under threat of having to live separately with the possibility her having to return to live in France.
16. Mr Martin suggested a sanction of two to three times the deposit would be appropriate.
17. In response the Respondents submitted the flooding issues at the property had not been their fault. As regards the failure to lodge the deposit they had been naïve and had demonstrated a lack of knowledge. Ms Ciucci submitted the Applicants delay in receiving the deposit back could have been avoided if they had agreed to accept the offer that had been made at the time. She further submitted that the Respondents had not been aware of the deposit funds being in their account because they had been doing renovation work to property and a lot of money was going in and out of the account so they did not notice.
18. The parties were agreed that the Tribunal had sufficient information before it to make a decision.

Findings in Fact

19. The parties entered into a Private Rented Tenancy that commenced on 1 September 2019 and ended on 31 August 2020.
20. The rent was £2475.00 per quarter.
21. The Applicants paid a deposit of £750.00 at the commencement of the tenancy.

22. The deposit was not secured with Safe Deposits Scotland until 8 September 2020.
23. The Respondents have been landlords since 2002.
24. The Respondents have three properties which are or have been rented out to tenants. They currently have two properties rented out.
25. The Respondents have not lodged their tenant's deposits in any Tenancy Deposit schemes until September 2020.
26. The Respondents failed to notice that they had retained the Applicants' deposit in their bank account over a period of almost one year.

Reasons for Decision

27. The Tribunal was satisfied it had sufficient information before it to allow it to make a decision without a hearing.
28. It was a matter of agreement that the Respondents were in breach of Regulation 3 of the 2011 Regulations and that as a result the Tribunal must impose a financial sanction upon the Respondents.
29. The Tribunal was concerned to note that despite the 2011 Regulations having been in force since 2012 and the Respondents being what could be considered professional landlords with three properties for rent and having been landlords for eighteen years, they were unfamiliar with the 2011 Regulations. It was of particular concern that the Respondents had not previously lodged their tenants' deposits in any approved schemes and did not seem to appreciate the seriousness of these omissions. However, it did appear to the Tribunal that the failures on the part of the Respondents were not due to wilful disobedience of the rules rather than a woeful lack of professionalism on their part. It also did appear that the Respondents were now familiar with the obligations incumbent upon them and it seemed to the Tribunal that it was unlikely that there would be any future breaches of the regulations.
30. The Tribunal did find it extraordinary that the Respondents could be unaware of there being an additional £750.00 in their bank account and would have thought that even with the explanation provided of money coming in and out of the account there would have been even more impetus for careful scrutiny. A primary purpose of the 2011 Regulations was to ensure that tenant's deposits were secure and not held in bank accounts operated by landlords. In this case the applicant's funds were at risk for a year during which time the funds could have been used by the Respondents or their creditors.
31. Any award under Regulation 10 requires to reflect a sanction which is fair and proportionate and just given the circumstances (*Jensen v Fappiano* 2015 GWD 4-89). In *Tenzin v Russell* 2015 Hous. L.R. 11 it was held that any payment in

terms of Regulation 10 is the subject of judicial discretion after careful consideration of all the circumstances of the case.

32. In reaching its decision the Tribunal has carefully considered the written and oral submission of all the parties. Whilst acknowledging the difficulties experienced by the Applicants in having to wait for their deposit to be returned to them from Safe Deposits Scotland and the problem of finding new accommodation under Covid -19 restrictions the Tribunal did not consider these were relevant to the level of sanction that should be imposed.
33. The Tribunal can in terms of Regulation 10 make an award of up to 3 times the deposit. Such an award should in the Tribunal's view be reserved for the worst cases where there has been a wilful disregard for the regulations and where the tenant's deposit has been unsecured over a long period of time. In this case the deposit was unsecured for about one year and it came about more as a result of an oversight and a failure to understand the operations of Safe Deposits Scotland. It was however a serious breach and not one that would merit an award at the lower end of the scale. In all the circumstances it is therefore appropriate that any sanction should be in the middle of the scale. Therefore, having found that the Respondent was in breach of Regulation 3, the Tribunal being obliged to make an award in terms of Regulation 10 finds the Applicants entitled to an order for payment of twice the amount of the deposit namely £1500.00.

Decision

- 34. The Tribunal finds the applicants entitled to an order for payment by the Respondents in the sum of £1500.00.**

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.

Graham Harding

**Graham Harding
Legal Member/Chair**

**29 October 2020
Date**