



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/21/1294

Re: Property at 6 Netherblane, Blanefield, G63 9JW (“the Property”)

Parties:

Mr Jonathan Bowman, Mrs Jennifer Bowman, 9 Blane Crescent, Blanefield, Glasgow, G63 9HT (“the Applicants”)

Ms Monique Goodwin, 49 Netherblane, Blanefield, Glasgow, G63 9JP (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

This is an application dated 28th May 2021 brought in terms of Rule 103 (Application for order for payment where landlord has not paid the deposit into an approved scheme) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended. The application is made under Regulation 9 of the *Tenancy Deposit Schemes (Scotland) Regulations 2011* (“the 2011 Regulations”).

The Applicants seek payment of compensation in respect of an alleged failure by the Respondent to pay the deposit the Applicants provided of £650.00 in relation to the tenancy into an approved scheme within 30 days of receipt of that sum.

The Applicants provided with their application copies of a tenancy agreement and various supporting documentation.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 21st June 2021, and the Tribunal confirmed execution of service.

The Respondent helpfully e-mailed her written response to the Tribunal in advance of the Case Management Discussion.

The Case Management Discussion

A Case Management Discussion was held on 16th August 2021 by Tele-Conference. The First Applicant, Mr Bowman, participated, and was not represented. The Second Applicant, Mrs Bowman, did not participate, but was represented by Mr Bowman. The Respondent participated, and was not represented.

The Respondent accepted that she was in breach of the 2011 Regulations. The Respondent explained that she had been aware of her obligations to lodge a deposit in an approved scheme, but that she had not realised that the Applicants had paid her the deposit through oversight on her part.

The Respondent described herself as an accidental landlord, who had initially let the Property out for a short period prior to moving in to it. Her situation changed, and she then bought another Property for herself to reside in, and continued to let out the Property. She has not let any other property before or since, and it was not her main source of income. She was a relatively inexperienced landlord, and is currently in the process of selling the Property to her mother for her mother to live in.

When her original tenant left, the Respondent let the Property to the Applicants. The Respondent explained that she runs her own business, and has both a personal bank account and one for that business. She frequently transfers money between the two accounts. As a result of this state of affairs, she omitted to notice amongst the various transfers between the accounts that the Applicants had transferred payment of the deposit of £650.00 to her on 3rd August 2016.

The Respondent accepted that her failure to realise she had been paid the deposit was inadvertence on her part, and for which she bore responsibility. When the Applicants enquired of her in late March 2021 as to where the deposit was lodged, she realised her mistake and lodged the deposit with an approved scheme on 6th April 2021. The tenancy ended on 8th March 2021.

Mr Bowman had lodged a copy e-mail from him to the Respondent on 1st August 2016 confirming that he had arranged the transfer of the deposit, but accepted that the Respondent had not responded to that e-mail. The Respondent explained that she had not read the e-mail at the time it was sent, and had only discovered it in an e-mail sub-folder after the Applicants had lodged a copy of it in this application.

Mr Bowman submitted that this was a serious breach by the Respondent, which required to be marked by a substantial award of compensation of at least double the value of the deposit.

Reasons for Decision

This application was brought timeously in terms of regulation 9(2) of the 2011 Regulations.

Regulation 3 of the 2011 Regulations (which came into force on 7th March 2011) provides as follows:

“(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.”

The Respondent as landlord was required to pay the deposit into an approved scheme. She accepted that she failed to do so.

Regulation 10 of the 2011 Regulations provides as follows:

“If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal -

- (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 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.”

The Tribunal is satisfied that the Respondent did not comply with her duty under regulation 3, and accordingly it must order the Respondent to pay the Applicants an amount not exceeding three times the amount of the tenancy deposit.

In the case of *Jenson v Fappiano* 2015 G.W.D 4-89, Sheriff Welsh opined in relation to regulation 10 of the 2011 Regulations that there had to be a judicial assay of the nature of the non-compliance in the circumstances of the case and a value attached thereto which sounded in sanction, and that there should be a fair, proportionate and just sanction in the circumstances of the case. With that assessment the Tribunal respectfully agrees.

In the case of *Tenzin v Russell* 2015 Hous. L. R. 11, an Extra Division of the Inner House of the Court of Session confirmed that the amount of any award in respect of regulation 10(a) of the 2011 Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case.

In determining what a fair, proportionate and just sanction in the circumstances of this application should be, the Tribunal took account of the facts that the Respondent

had no specialised knowledge of housing law or regulations, that she did not engage in the letting of property as her full-time occupation, had overlooked the fact that the deposit had been paid, had swiftly upon realising that the deposit needed to be lodged in an approved scheme arranged to do so, and accepted at the first opportunity before the Tribunal that she was at fault and had contravened Regulation 3 of the 2011 Regulations.

In these circumstances, the Tribunal considers that albeit ignorance of the terms of the 2011 Regulations is no excuse or defence to not complying with them, the foregoing factors do represent mitigation in respect of the compensation to be awarded in the exercise of its judicial discretion.

However, balanced against these mitigating factors, are the fact that the Respondent received payment of the deposit in August 2016 and did not comply with her legal obligations as a landlord with respect to the 2011 Regulations, which regulations have been enacted to provide protection to tenants in respect of their deposit and ensure that they can obtain repayment of their deposit at the conclusion of the lease, and the fact that the period during which the deposit was not lodged in an approved scheme and during which the Applicants did not have the security provided by such lodging was lengthy (approximately four years and eight months).

Balancing these various competing factors in an effort to determine a fair, proportionate and just sanction in the circumstances of this application, the Tribunal considers that the sum of £975.00 (one and a half times the amount of the tenancy deposit) is an appropriate sanction to impose.

Decision

For the foregoing reasons, the Tribunal orders the Respondent in respect of her breach of Regulation 3 of the 2011 Regulations to make payment to the Applicants of the sum of £975.00 in terms of Regulation 10(a) of the 2011 Regulations.

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.

N Kinnear

16/08/2021

Legal Member/Chair

Date