

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

Chamber Ref: FTS/HPC/PR/23/1009

Re: Property at 17/4 Spey Terrace, Edinburgh, EH7 4PX ("the Property")

Parties:

Mr Eslam - Mohammed Elsmawi, 17/4 Spey Terrace, Edinburgh, EH7 4PG ("the Applicant")

Mr Taslim or Tony Asghar, 8 Burdiehouse Road, Edinburgh, EH17 8AF ("the Respondent")

Tribunal Members:

Andrew McLaughlin (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") granted the Application to the extent of making an award against the Respondent in the sum of £1,500.00.

[1] The Applicant seeks an award under the Regulations in respect of a deposit paid by the Applicant to the Respondent under a tenancy agreement between the parties which was not registered in an approved scheme as required by Regulation 3

[2] The Application had called for a Case Management Discussion (CMD) on 25 May 2023. The Respondent was not in attendance. The Application had been continued to a Video Hearing for evidence to be heard. Directions had been made obliging the

Respondent to attend and also to set out in writing any defence to be relied on within 21 days of the CMD. Nothing ever was received from the Respondent.

The Hearing

[3] The Application then called for a Video Hearing on 15 August 2023. The Applicant was not in attendance at this Hearing- for reasons that never were adequately explained- but was represented by Ms McGourt of Granton Information Centre. The Respondent- who introduced himself as Mr Ashgar- was now personally present.

[4] The Tribunal began by considering whether there were any preliminary matters. Both parties confirmed that they had no preliminary matters to raise and that they were content for the Tribunal to begin.

[5] The Tribunal challenged the Respondent as to why he had not complied with the Direction made by the Tribunal to set out any defence to the Application or mitigation to be relied upon in writing. The Tribunal considered the Respondent's position here to be unsatisfactory. He made reference to attending at a solicitor's office some four weeks before, and separately attending at Citizen's Advice and Shelter. The Respondent appeared to say that he had various agents phone the Tribunal but had been told that the Tribunal *'wasn't very helpful'*.

[6] The Tribunal took the view that the Respondent had clearly been aware of the Application since the papers were served on him on 21 April 2023 and, by his own admission, had taken advice many weeks ago. There seemed no good reason to the Tribunal that might excuse the Respondent's non-compliance with the Directions made.

[7] This seemed relevant to the Tribunal because the Respondent appeared now to be wanting to verbally inform the Tribunal that someone called Amanda Bradley who the Respondent said was *"an agent"* had *"stolen the money"*. He also claimed that the deposit only ever was £500.00 and that it had previously been given back to the Applicant.

[8] The Tribunal was not impressed with the Respondent's demeanour. He came across as quite disrespectful at times to the Tribunal and dismissive of the questions posed to him by the Tribunal members. He was vague and brief in his answers.

[9] The Respondent even appeared at times to be trying to insult the Tribunal by suggesting that nobody he had spoken to *"has ever heard of you"* and that the various people he had consulted said *"you're not very helpful"*.

[10] This attitude was further manifested when the Respondent openly lit and began smoking a cigarette as the Tribunal was in session. The Tribunal rebuked the Respondent.

[11] The Tribunal noted that the Respondent claimed to own seven properties in the Edinburgh area. The Respondent claimed that he could neither read or write and went on to explain that the text messages from him included in the papers were written by 'speaker text', but did not explain the one email he issued to the Tribunal prior to the initial CMD or his signature on the tenancy. There was little to no substance in what the Respondent was saying. The only thing he could point to was this new and undeveloped argument that someone had stolen the deposit. But the relevance of that in any event was not immediately apparent. The Respondent claimed to have returned the deposit of £500.00 to the Applicant as he was sympathetic to the Applicant's difficult and financial circumstances which had latterly become known to him. The Applicant's representative claimed that the deposit had not been returned. The Applicant continues to reside in the Property.

[12] The Tribunal felt it inappropriate to delay matters simply because the Respondent had not done what he was directed to do. The Tribunal considered that it was in the interests of justice to decide matters based on the information before the Tribunal today.

[13] Having heard from parties, the Tribunal made the following findings in fact.

Findings in Fact

- I. *The parties entered into a tenancy agreement whereby the Respondent let the Property to the Applicant by virtue of a Private Residential Tenancy Agreement that commenced on 24 November 2020;*
- II. *The tenancy agreement provided for a deposit of £699.00 to be paid by the Applicant to the Respondent for registration in an approved scheme;*
- III. *The deposit was never registered in such a scheme;*
- IV. *The Respondent had breached his obligations under Regulation 3;*
- V. *The Respondent owns seven properties and claims that other deposits in respect of other properties are registered in approved schemes, but that this deposit (and the deposit for one other property) was apparently "stolen" by someone who the Respondent describes as "an agent" by the name of Amanda Bradley;*
- VI. *The Respondent's position is that he therefore knew about the rules but blames the actions of a third party. It is unclear whether the Respondent is saying that the third party was supposed to register the deposit but didn't- and then lied to the Respondent by telling him that it was registered or whether she is supposed to have just stolen the deposit with the Respondent then taking no action;*

- VII. *The Respondent's failure to set down his position in writing as directed and his glib, superficial explanations to the Tribunal do not allow for any meaningful such analysis;*
- VIII. *The Tribunal does not accept the Respondent's account of matters as being credible or reliable;*
- IX. *The Respondent appears to have gone about the business of managing this tenancy in an amateurish manner- with blunt unfriendly communications between landlord and tenant by text message that suggest a casual attitude to due process;*
- X. *There is no credible evidence before the Tribunal to establish any mitigation in respect of the Respondent's failure to follow the Regulations;*
- XI. *The Applicant continues to reside in the Property;*
- XII. *The Applicant's non- attendance today has resulted in the Tribunal being unable to conclude whether the deposit paid was £699.00 or £500.00 as now suggested by the Respondent.*

Reasons for Decision

[14] Having made the above findings in fact, the Tribunal finds that the Respondent has failed to comply with his obligations under Regulation 3. The Tribunal considered that the Respondent is an experienced landlord who clearly knew the legislation and chose not to comply.

[15] The Tribunal considered the recent case of the Upper Tribunal in the case of *Gordon Bavaird -v- Lisa & David Simpson - FTS/HPC/PR/22/1227*. The Tribunal assessed that a fair and proportionate sanction in respect of Regulation 10 was the sum of £1,500.

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

15 August 2023
Date