



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/PR/23/1168

Re: Property at 83 James Street, Stirling, FK8 1UB (“the Property”)

Parties:

Ms Petra Soltesz, 7 Craighorn Road, Alva, FK12 5DL (“the Applicant”)

Mr Robert Munro, 18 Claredon Place, Stirling, FK8 2QW (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent failed to comply with his duty as a Landlord in terms of Regulations 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”) as amended by The Housing (Scotland) Act 2014 (Consequential Provisions) Order 2017 by failing to pay the Applicant’s Tenancy Deposit to the scheme administrator of an Approved Tenancy Deposit Scheme grants an Order against the Respondent for payment to the Applicant of the sum of ONE HUNDRED AND THIRTY FIVE POUNDS (£135.00) Sterling.

Background

1. This is an application for an order for payment for where it is alleged the Respondent has not paid a deposit into an approved scheme under the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The Application is made under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
2. The Application was accompanied by a copy of a Private Residential Tenancy Agreement commencing on 1 September 2020, a screen shot from

My Deposits Scotland dated 23 February 2019 and emails dated 1 March 2019 between the Applicant's representative Ms Walker and the Respondent.

3. The Applicant also lodged a second application seeking the return of the deposit of £270 which had not been lodged. This application proceeded under case reference FTS/HPC/CV/23/1421.
4. The Tribunal requested a new application be submitted under the Rule 103 application as the Applicant had not stated what order she requested from the Tribunal. A new application was lodged on 16 May 2023 in which the Applicant sought an order in the sum of £270.
5. In response to a further request from the Tribunal seeking confirmation of when the tenancy ended, the Applicant sent a screen shot of a text message indicating the tenancy had terminated on 28 February 2023.
6. On 5 June 2023, the Tribunal accepted the Application under Rule 9 of the Regulations 2017.
7. The Tribunal advised parties that a Case Management Discussions ("CMD") under Rule 17 of the Regulations in relation to both matters would proceed on 7 August 2023. The Respondent was required to lodge written submissions by 17 July 2023.
8. On 5 July 2023 the Respondent emailed the Tribunal explain that an additional £270 deposit paid by the Applicant was not lodged due to his oversight. He attached a screen shot of a text message sent on 31 May 2023 to the Applicant offering to repay this. This was sent to the Applicant the day after he received the My Deposits Scotland adjudication decision in her favour for an earlier deposit of £270 lodged in 2019. The Respondent submitted he had not received any response from the Applicant to his offer to repay the additional £270 which had not been lodged with My Deposits Scotland.
9. The Tribunal sought clarification from the Applicant whether she was willing to accept the Respondent's offer of 31 May 2023 to pay the remaining unprotected deposit of £270 to her, which was the subject matter of the application under FTS/HPC/CV/23/1421. The Applicant's representative Ms Walker confirmed in an email dated 26 July 2023 that the Applicant was willing to accept that offer.

Case Management Discussion

10. The Tribunal proceeded with CMD on 7 August 2023 by way of teleconference. Ms Walker appeared for the Applicant. Mr Munro appeared on his own behalf. The CMD proceeded with case reference FTS/HPC/CV/23/1421.

11. Ms Walker explained that the Respondent originally moved into the Property in February 2019. There were a couple of girls already in the Property when she moved in. The Applicant paid a deposit of £270 to the Respondent which he paid into My Deposits Scotland. Tenants left and a new tenancy agreement, which was lodged with the application, was entered into between the parties and James Douglas on 1 September 2020. The Applicant's deposit remained with My Deposit Scotland in relation to this tenancy. Mr Douglas also paid a deposit to the Respondent. Mr Douglas left the tenancy in January 2021. At that time the Applicant paid a further £270 deposit. It is this sum which is not protected in terms of the 2011 Regulations. The total deposit of £540 had accordingly been paid to the Respondent but only £270 was protected. The tenancy agreement terminated on 28 February 2023.
12. Ms Walker went onto explain that the Applicant was concerned about the Property being untidy and damaged by others. The Respondent had never prepared an inventory at the start of the tenancy and had never inspected the Property. After the tenancy terminated, she explained that the adjudication process carried out by My Deposits Scotland determined that the whole of the £270 placed with them be returned to the Applicant. This was returned to the Applicant at the end of May 2023.
13. The Tribunal raised the issue of the offer made to the Applicant by the Respondent on 31 May 2023 to repay the remaining £270 to the Applicant but that he had not received a reply to this. Ms Walker clarified that the Applicant had been confused and thought the Respondent's text referred to the sum awarded under the adjudication process. She confirmed that the Respondent's offer to repay the unprotected £270 was accepted. The Tribunal noted that she had intimated this to the Tribunal on 26 July 2023.
14. Ms Walker went onto explain that the fact that the deposit had not been protected had caused the Applicant financial hardship when she moved into a new house. The Applicant was a student and money was tight.
15. In response, Mr Munro admitted that he had not placed the second half of the deposit of £270 received by him in January 2021 in a tenancy deposit scheme. This had been an oversight on his part. He had offered to pay the unprotected £270 back to the Applicant on 31 May 2023, but had not received a reply. On being questioned by the Tribunal he understood that this offer was now accepted with reference to the action under FTS/HPC/CV/23/1421. That action was accordingly continued for the Respondent to make payment.

Findings in Fact

16. The Applicant entered into a Private Residential Tenancy with the Respondent in February 2019 to rent the Property. The Applicant paid the Respondent £270 being her share of a deposit. The Respondent lodged this deposit in terms of the 2011 Regulations.

17. The deposit was transferred to cover a new tenancy commencing on 1 September 2020 between the Applicant, James Douglas and the Respondent.
18. Mr Douglas left the tenancy in January 2021. The Applicant paid the Respondent another £270 to make up the total deposit of £540. The Respondent did not lodge the deposit into an approved scheme. £270 of the deposit was not protected in accordance with the 2011 Regulations for the remainder period of the tenancy.
19. The Applicant's tenancy terminated on 28 February 2023. After the adjudication process, the protected part of the deposit of £270 was returned to the Applicant at the end of May 2023.
20. On 31 May 2023 the Applicant offered to repay the unprotected deposit of £270. The Applicant did not respond to the Respondent. By email of 26 July 2023 the Applicant's representative accepted that offer. The Respondent has undertaken to return the Applicant's deposit in full.

Reasons for decision

21. For the purpose of Regulation 9(2) of the 2011 Regulations an application where a landlord has not paid a deposit into a scheme administrator must be made within three months of the tenancy ending. The Tribunal found that the application was made in time, the tenancy having terminated on 28 February 2023 and the amended application being made on 16 May 2023.
22. Regulation 3 (1) and (2) of the 2011 Regulations provides –

“(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.

The tenancy in this case was a “relevant tenancy” for the purposes of the Regulations. The Respondent accepts the part of the deposit paid to him of £270 in January 2021 was not paid into an approved scheme in terms of the Regulations.

23. The 2011 Regulations were intended, amongst other things to put a landlord and a tenant on equal footing with regard to any tenancy deposit and to provide a mechanism for resolving any dispute between them with regard to the return of the deposit to the landlord or tenant or divided between both, at the termination of a tenancy. They were designed to prevent any perceived “mischief” by giving a landlord control over the return of the deposit at the termination of a tenancy.
24. The amount to be paid to the Applicant is not said to refer to any loss suffered by the Applicant. Accordingly, any amount awarded by the Tribunal in such an application cannot be said to be compensatory. The Tribunal in assessing the sanction level has to impose a fair, proportionate and just sanction in the circumstances, taking into account both aggravating and mitigating circumstances, having regard to the purpose of the 2011 Regulations and the gravity of the breach. The Regulations do not distinguish between a professional and non-professional landlord such as the Respondent. The obligation is absolute on the landlord to pay the deposit into an Approved Scheme.
25. In assessing the amount awarded, the Tribunal has discretion to make an award of up to three times the amount of the deposit, in terms of Regulation 10 of the 2011 Regulations. In the amended application submitted on 16 May 2023 the Applicant sought £270, being the amount of the unprotected part of the deposit.
26. The Tribunal considered the Respondent had admitted his failure to comply with the 2011 Regulations. The Respondent explained this was an oversight on his part. He had paid the Applicant's original deposit of £270 into an approved scheme in terms of the 2011 Regulations in 2019 where it remained until the end of the tenancy.
27. Despite the Tribunal being satisfied that the Respondent had failed to comply with his duties under Regulations 3 (1) of the 2011 Regulations, the purpose of the 2011 Regulations had not been defeated. The Respondent had accepted he was in breach of the Regulations and that this had been an oversight on his behalf. He was clearly aware of the 2011 Regulations and had complied with them in depositing the Applicant's original deposit with a scheme administrator in 2019. The Tribunal did not consider his failure to lodge the second part of the deposit with a scheme administrator to be a deliberate act to flout the 2011 Regulations. The second part of the deposit however was unprotected from January 2021 until 28 February 2023. The Tribunal accepted that the Applicant would have been uncertain whether she would ever see the unprotected part of her deposit again and would have suffered some financial hardship. She had sensibly raised an action of payment against Respondent for the return of that deposit. However the Respondent had attempted to repay the unprotected part of the deposit by his offer of 31 May 2023 after the adjudication process determined that the protected part of the deposit be paid to the Applicant in full at the end of May 2023.

28. In all the circumstances the Tribunal considered that a fair, proportionate, and just amount to be paid to the Applicant by way of sanction was half the amount of the unprotected deposit.

Decision

29. The Tribunal accordingly made an Order for Payment by the Respondent to the Applicant of £135.

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.

9 August 2023

Legal Member

Date