



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

Chamber Ref: FTS/HPC/PR/20/1374

Re: Property at 2/2 17 Turnbull Street, Glasgow, G1 5PR (“the Property”)

Parties:

Miss Katarzyna Patryniak, Ms Hania Ellingham, ul Sloneczna 9, 63-760, Chachalnia, Poland; Foresters Cottage, Main Street, Sutton on the Forest, York, North Yorkshire, YO61 1DP (“the Applicants”)

Mrs Marie Houlihan, Ounavarra, Millmount Rd, Mullingar, Co Westmeath, N91 Y652, Ireland (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member)

Decision

- 1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) being satisfied that the Respondent as landlord of the property at 2/2 17 Turnbull Street Glasgow G1 5PR , did not comply with any duty in Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011, makes an order for the Respondent to pay to the Applicants the sum of one thousand one hundred and twenty five pounds (£1125).**
- 2. This was the second case management discussion ‘CMD’ in connection with an application in terms of rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, ‘the rules’ for a penalty in connection in terms of regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011, ‘the regulations’. The applicants were represented by Ms Holly Shaw of Strathclyde Students Union Advice Hub. The respondent attended. The CMD proceeded by conference call due to the Covid-19 pandemic.**

3. A first CMD on 19 September 2020 was adjourned and the tribunal made the following directions:

The applicant is required to provide:

- 1. Copies of all the attachments referred to in their email to the tribunal of 10 September 2020 including a copy of the exchange of emails between them and the respondent sent on or around 3 June 2018 and a copy of the text message sent around 9 May 2018 regarding the deposit. For the avoidance or doubt the documents must be lodged in a suitable format such as pdf.**
- 2. Copies of any bank statements or other evidence they may have to substantiate their position regarding the deposit.**
- 3. Copies of any other evidence they have which would show or tend to show that the sum of £1125 was paid by them as a deposit for the property.**

The respondent is required to provide:

- 1. A copy of the lease between the respondent and Miss K Patryniak and others entered into around 2017.**
- 2. Any other documents she may have to substantiate her position.**

Preliminary matter

4. It was noted at the first CMD that the respondent was having difficulties with her email. It was decided that the tribunal would therefor communicate with the respondent by post. Unfortunately, the tribunal's letter to the respondent giving her notification of the adjourned CMD was not received by her. This was sent by registered post on 24 September 2020. The respondent contacted the tribunal on 27 October 2020 to seek an adjournment of the CMD. This was refused by the convenor. The tribunal invited the respondent to raise this matter again at the start of the CMD. The respondent stated that she felt that she had been given insufficient time to prepare for the CMD as she had only discovered the new date when she telephoned the tribunal on 27 October 2020. The respondent confirmed that she had received the correspondence lodged by the applicants in compliance with the direction. The applicant's email of 29 September 2020 with enclosures had been sent to the respondent by post on the 2 October 2020. Mrs Houlihan confirmed that she had received this. She had also received their further email of 20 October 2020 with enclosures. Mrs Houlihan had also sent her own written submissions to the tribunal on 29 September 2020 in compliance with the directions.
5. The tribunal decided it was in the interests of justice to proceed with the CMD. It was unfortunate that the tribunal's letter of 24 September 2020 had not been received by her but she was aware on 19 September 2020 that a new CMD would be fixed for around 6 weeks later and she had received fair notice of the

applicants' position. The tribunal decided that any prejudice to the respondent in the lack of notice was outweighed by the prejudice to the applicants in adjourning the matter again. Mrs Houlihan had been given the opportunity of lodging documents to substantiate her position in accordance with the direction. It had been suggested to the respondent by the tribunal on 19 September 2020 that she may wish to appoint a representative to deal with matters on her behalf, but she had decided not to do so.

6. The tribunal had before it the following copy documents:
 - (1) Application dated 15 June 2020.
 - (2) Private residential tenancy agreement.
 - (3) Email from Miss Patryniak to the respondent ending the tenancy dated 20 March 2020.
 - (4) Correspondence from the 3 deposit schemes.
 - (5) Text message from respondent to Miss Patryniak dated 25 May 2020.
 - (6) Letter to the tribunal from respondent dated 28 August 2020.
 - (7) Email to the tribunal from applicants dated 10 September 2020.
 - (8) Letter to the tribunal from respondent dated 8 September 2020.
 - (9) Letter to the tribunal from respondent dated 29 September 2020 enclosing:
 - (i) Submission headed 'Background to Flat 2/2 17 Turnbull Street Glasgow'.
 - (ii) Copy of previous submissions sent to the tribunal.
 - (iii) Lease for the property between 1 September 2015 to 31 August 2017.
 - (iv) Copy emails.
 - (v) Photographs.
 - (10) Email from applicants' representative to the tribunal dated 29 September 2020 enclosing:
 - (i) Email from Ms Ellingham to the respondent around 5 August 2018.
 - (ii) Photographs.
 - (iii) Submission.
 - (iv) Text message from respondent to outgoing tenant dated 9 May 2020.
 - (v) Text message from Ms Patryniak to the respondent dated 3 June 2018.
 - (vi) Text message from respondent to Ms Patryniak dated 7 June 2018.
 - (vii) Bank statements with transactions on 18 June 2018 for £562.50 and £475.18.
 - (viii) Text messages with Ms Patryniak and outgoing tenant regarding reduction in sum from £562.50 to £475.18.
 - (11) Email from applicants' representative dated 20 October 2020.
7. The tribunal allowed item 11 above to be received although late, the respondent having no objection. The tribunal noted that the documents sent with that email related to attempted negotiations between the parties which were not relevant to the decision before the tribunal.

The applicants' position

8. It was the applicants' position that the applicants, a third tenant and the respondent entered into a private residential tenancy agreement for let of the property in July 2018. It was agreed with the respondent that, instead of the agreed deposit of £1125 being handed over to her, money would be paid to 2 outgoing tenants. 2 sums were paid out- £475.18 to one tenant and £562.50 to another. The tenancy came to an end on 30 April 2020 and the deposit has not been returned. The deposit was not lodged in a deposit scheme between July 2018 and April 2020.
9. The applicants have lodged bank statements to confirm that the 2 sums were paid out. They have also lodged copy messages to explain why one of the outgoing tenants was paid a reduced sum of £475.18. The tribunal noted that according to information lodged by the respondent, Ms Patryniak was residing in the property from 2016. Ms Shaw clarified that until 2018 Ms Patryniak was what she described as a 'subtenant'. Ms Patryniak did not have a tenancy agreement until 2018 and she did not pay her share of the deposit until 2018. Ms Shaw had lodged copy text messages to show that Ms Patryniak and the 2 incoming tenants ie Ms Ellingham and a third tenant, each paid £375 as a deposit. This £1125 was then paid out in 2 lots to the 2 outgoing tenants. She had also lodged copy tenant messages to explain why the sum of £562.50 was reduced to £475.18. The applicants have also lodged copy texts from the respondent which appear to show that she was aware of this arrangement regarding the deposit and was in agreement.
10. With regard to the gravity of the breach it was the applicants' position that the respondent had failed to lodge the deposit for the duration of the tenancy. The respondent has also failed to return the deposit on the basis of damage to the property, which is denied by the applicants.

The respondent's position

11. At the CMD on 19 September 2002 the respondent stated that she and her husband purchased the property for their daughter when she was studying in Glasgow. Her husband dealt with all matters until his death in 2016. He may have taken a deposit for the property in the past but she had no knowledge of this.
12. She agreed that she entered into a tenancy agreement with the 2 applicants and a third tenant in July 2018 and this tenancy came to an end on 30 April 2020. She instructed an agent to draw up the lease. She stated that the terms were 'standard' and this included the reference to a deposit. The first named applicant was already an existing tenant and 2 tenants were leaving and 2 taking their place. The respondent did not hold a deposit for the applicants, and she did not receive the sum of £1125 from them. The respondent did not recollect sending her text from 25 May 2020 and she had not seen the emails lodged with the email of 10 September 2020 so felt at a disadvantage. The respondent was not happy with the condition of the flat after the applicants and the 3rd tenant left in April

2020. The respondent stated that she did not return the deposit due to the condition of the property. The respondent's position appeared to be that she was not paid a deposit in 2018 but a deposit may have been paid by former tenants at some point in the past before 2016.

13. At the CMD on 29 October 2020 the respondent stated that she had now seen the bank statements and copy text messages lodged by the applicants which were not available at the first CMD. The respondent was asked about the email sent to her from Ms Ellingham dated around 5 August 2018 in which stated:

As part of the previous arrangement Olivia and myself as Sub-tenants made all our payments for rent to Kasia. As the new document was backdated to the 1st July 2018 could I please have written confirmation that you have received, in full, the payments for the deposit, and rent for July and August so that we will not mistakenly be charged these again?

14. The respondent had no recollection of receiving the email. The respondent had no recollection of the text message from 9 May 2018 in which she appears to state that the outgoing tenants would receive their deposit of £1125 from the incoming tenants.

15. In her submission to the tribunal dated 29 September 2020 the respondent stated:

From the date of purchasing the flat in 2007 to May 2020 many students went through the flat and there was never a problem before this time with deposits. I was lead to believe by Kasia Patryniak that the students sorted this out among themselves. As Kasia was the longest standing tenant in the flat (dating back to September 2016) I agreed to her suggestion regarding the deposit.

16. However, at the CMD on 29 October 2020 the respondent stated that 2018 was a very difficult time for her due to the sudden loss of her husband in 2016. She stated she had no recollection of the arrangement being put forward by the applicants that the outgoing tenants to receive the deposit from the incoming tenants.

17. At the CMD on 19 September 2020 the respondent acknowledged that she was not happy with the way the flat had been left by the applicants. The respondent did not deny that she had sent a text message to Ms Patryniak on 25 May 2020 which stated:

Because of the virus restrictions I am unable to travel to Glasgow to inspect the flat but my estate agent has been round. She informs me that prior to re renting the flat needs a professional clean and ...I therefor can't refund the deposit until everything in completed and I receive all sets of keys and the new fob.

18. The respondent's position appears to be that on the one hand, she did not receive a deposit from the applicants but on the other, she did not return the deposit because of issues with the flat. The respondent is also of the view that much of what happened in 2018 is difficult for her to recall due to her bereavement and family difficulty. The respondent stated this is the only property she rents out. It was purchased to enable her daughters to live in it whilst they studied in Glasgow. She was completely unaware of the need to lodge money in a deposit scheme and it was always her husband who dealt with matters.

Findings in fact

19. The tribunal is satisfied that the applicants entered into a private residential tenancy agreement with the respondent in July 2018 for let of the property.

20. It was agreed that a deposit of £1125 would be paid.

21. It was agreed that rather than paying the sum of £1125 to the respondent, the applicants and a third named tenant would pay the sum of £1125 to the outgoing tenants.

22. The tribunal is satisfied that the deposit was not paid in to a recognised deposit scheme and the respondent did not provide details of the scheme or a statement that she is or has applied to be entered in the register of landlords maintained by the local authority, as required by regulation 42 of the regulations.

23. The tribunal is satisfied that the tenancy came to an end around 30 April 2020.

24. The tribunal is satisfied that the deposit has not been returned to the applicants by the respondent.

Reasons

25. All of the written evidence lodged was in support of the applicants' position that they paid a deposit for the property. This included the written submission made by the respondent. The tribunal decided on the balance of probability that the deposit was indeed paid. Being satisfied that a deposit was paid, it was clear that the deposit was not paid into a deposit scheme for the duration of the tenancy. Regulation 3 provides:-

A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 days of the beginning of the tenancy, pay the deposit to the scheme administrator of an approved scheme. And provide the tenant with the information required under regulation 42.

26. The respondent is a registered landlord but the tribunal heard no evidence that the respondent complied with any of the other duties contained in regulation 42 of the regulations.

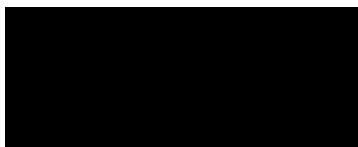
27. Having established that a breach of the regulations had taken place, the tribunal went on to determine the gravity of the breach and the appropriate penalty. The tribunal reviewed all of the recent cases regarding tenancy deposit schemes and noted that in the case of Kirk-v-Singh 2015 SLT (ShCt) 111 Sheriff Jamieson in Singh was mindful of the need to:-

proceed to impose a sanction which is "fair, proportionate and just having regard to the seriousness of the noncompliance.

28. The tribunal, having heard all of the available evidence and taking into account the representations made for the respondent is satisfied that the respondent failed to comply with all of her obligations in terms of regulation 3. The respondent was not aware of her obligations in terms of the regulations. The respondent's husband dealt with the property and his sudden death had left the respondent dealing with matters for which she had no knowledge or expertise. The family have only one property and had used an agent to deal with the lease. However, the lease clearly referred to a deposit of £1125 and the deposit scheme. The respondent has been in correspondence with the applicants about the lease being drawn up, the payment of the deposit and the issues she had with the condition of the property at the end of the lease. The respondent has retained the deposit until the issues with the condition of the flat have been resolved. This is the type of situation the scheme has been designed to avoid. The tribunal decided a penalty of £1125 was fair proportionate and just given the gravity of the breach.

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.



Lesley A Ward Legal Member

29 October 2020

Date