



**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/23/1512

Re: Property at 33A Howard Street, Arbroath, Angus, DD11 4DG (“the Property”)

Parties:

**Mr Conor Johnston, Miss Christian Walton, 20 Gardner Lane, Arbroath, Angus,
DD11 4HQ; 5 Burnhead Terrace, Arbroath, Angus, DD11 2RB (“the Applicant”)**

**Mr Adam Cargill, 57 Bishoploch Road, Arbroath, Angus, DD11 2DH (“the
Respondent”)**

Tribunal Members:

Valerie Bremner (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that Respondent should pay to the Applicants the sum of £475 having found that the Respondent has breached the duties set out in Regulations 3 and 42 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 in relation to the tenancy between the parties.

Background

1. This is an application under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 and Rule 103 of the tribunal rules of procedure in respect of an alleged failure to comply with the duties required of a landlord under Regulation 3 of the 2011 Regulations.
2. The application was first lodged with the tribunal on 11th May 2023 and accepted by the tribunal on 30th May 2023. A case management discussion was initially fixed for 21st July 2023 at 2:00pm.

Case Management Discussion

3. The Applicants attended the case management discussion and Mr. Johnston spoke on their behalf. The Respondent Mr Cargill attended and represented himself.

4. The Tribunal had sight of the application, a tenancy agreement, a letter from safe Deposits Scotland, text messages, correspondence with the tribunal and an e-mail setting out Mr Cargill's position in relation to the application.

5. The parties entered into a private residential tenancy at the property with effect from 16th of March 2021 and this tenancy had ended on 13th of April 2023. The monthly rent payable in terms of the tenancy agreement was £475 and the total deposit paid was also £475.

6. The tribunal legal member explain the nature of the duties to the parties noting that there were two duties on a landlord in terms of the 2011 Regulations. The first to protect the tenancy deposit paid within 30 working days of the start of the tenancy and the second, to give certain information to tenants within the same timeframe as set out in Regulation 42. This information was the amount of the deposit and when the landlord received it, when the deposit was paid into an approved scheme, the address of the property, landlord registration details, the tenancy deposit scheme details and the circumstances under which all or part of the deposit could be retained in terms of the tenancy agreement.. Mr Cargill explained that a Letting Agent had taken payment of the deposit from the Applicants and had taken some time to pass that to him after deduction of their fee, but he accepted that the deposit was protected late. He indicated that the Applicants would have been aware of the amount of the deposit and when it was protected but also accepted that some of the information required to be given to tenants in respect to Regulation 3 had not been given.

7. The Applicant Mr Johnston confirmed that the Applicants had not received the full information at any time, only a letter from a tenancy deposit scheme provider setting out when the deposit was protected.

8. The tribunal legal member raise the issue of whether any other party ought to be a party to the application. The tenancy agreement referred to "A & H Cargill" as landlords. Mr Cargill confirmed that the names related to himself and his wife. He said that he dealt with the tenancy and the tenants and did not think it necessary that she become a party to the application. Mr Johnston on behalf of the Applicants agreed with this approach given that he said they had dealt only with Mr Cargill during the tenancy.

9. The Tribunal Legal Member asked the Respondent if the breach of the Regulations was accepted by him, and he confirmed that it was. The tribunal then gave both parties the opportunity to comment on the amount of any sanction that the tribunal should impose, explaining that the maximum sanction which could be awarded is three times the tenancy deposit paid.

10. Mr. Johnson for the Applicants asked for a short adjournment to confer with Miss Walton on this point. In the application the Applicants had been seeking a sanction of

up to three times the deposit paid. This was still the Applicants' position. Mr Johnston highlighted that he felt that both he and Miss Walton had been left in the dark as to what had happened to their deposit and although they had received a letter from a tenancy deposit scheme provider in July 2021 this had simply told them that the tenancy deposit had been protected later than it should have been. Mr Johnson's position was at no stage did the applicants receive the required information in full as required by Regulation 42 and set out in paragraph 6 above.

11. Mr Cargill indicated that although the deposit was taken on his behalf by Letting Agents he dealt with repairs to the property and the deposit was passed to him to deal with. He said that the delay in dealing with the deposit was because he and his wife had suffered from COVID-19 and other ongoing health issues. He said that he could not now remember how he had become aware that the deposit was unprotected, but he did become aware of this and as soon as he did so he lodged the deposit with one of the tenancy deposit scheme providers. He said that this delay was not intended and had simply been a mistake. He accepted that the full information required in terms of Regulations 3 and 42 had not been given info to the Applicants. He no longer owned the property, and he had no other rental properties. The property had acquired by a family member and although it was rented out currently he was not the landlord.

12. As far as the tenancy deposit was concerned this was still the subject of a dispute between the parties as to whether any part of this should be retained by the landlord and this was being dealt with by the tenancy deposit scheme provider dispute resolution service.

13. As the facts surrounding the duties on a landlord were not in dispute and the breach of the Regulations was accepted the tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact and Law

14. The Applicants entered a private residential tenancy at the property with the Respondent as landlord on 16th March 2021.

15. The Respondent at the time of the tenancy was a registered landlord at the property and an owner of the property.

16. At the start of the tenancy the Applicants paid a deposit of £475 to Letting Agents acting on behalf of the Respondent.

17. The tenancy agreement between the parties came to an end on 13th of April 2023.

18. The tenancy was a relevant tenancy within the meaning of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

19. The requirement to protect the deposit paid by the Applicants in an approved scheme and to comply with the obligation to provide required information in terms of Regulations 3 and 42 of the 2011 Regulations should have been complied with in respect of this tenancy within 30 working days of 16th March 2021.

20. The tenancy deposit was protected with a tenancy deposit provider on 23rd July 2021.

21. Whilst the tenants became aware of where the tenancy deposit was protected and the amount that was protected the full information required to be given to them in terms of Regulations 3 and 42 of the 2011 regulations was not given to them during the tenancy.

22. The Respondent and his wife had COVID-19 around the time that the tenancy deposit was passed to him.

23. As a result of this when the deposit was received by the Respondent from Letting Agents who had taken it on his behalf it was not protected within the required timeframe.

24. As soon as the Respondent became aware that the tenancy deposit was not protected, he lodged this within one of the approved tenancy deposit schemes.

25. The deposit paid by the Applicants is currently the subject of the dispute resolution mechanism within the approved tenancy provider scheme as there is a dispute between the parties as to how much if any of the deposit should be returned to the Applicants.

Reasons for Decision

26. The Tribunal having found there was a breach of the Regulations, it then fell to the Tribunal to consider what sanction should be made in respect the failure to protect the deposit and give all the required information in terms of Regulations 3 and 42 of the 2011 regulations within required timeframe. The tribunal had regard to the case of ***Russell Smith and others against Uchegbu [2016] SC Edinburgh 64***. In particular the tribunal required to consider what was a fair proportionate and just sanction in the circumstances of the case always having regard to the purpose of the Regulations and the gravity of the breach. Each case will depend on its own facts and in the end of the day the exercise by the tribunal of its judicial discretion is a balancing exercise.

27. The tribunal considered all the information before it and found there were a number of factors to be weighed in the balance in this application. The first was that the deposit had been unprotected for almost three months after the date it should have been lodged within one of the approved tenancy deposit schemes. The Respondent and his wife had been unwell for some time around the start of the tenancy and this had contributed to the delay in protecting the deposit. The Respondent could not recollect what had prompted him to remember that the deposit ought to be protected but this had been done on 23rd July 2021. The fact that the tenancy deposit was protected although late, meant that at the end of this tenancy the dispute over the return of the deposit could be dealt with by the independent tenancy deposit scheme provider dispute resolution which deals with disputes between the parties over return of a deposit paid. The Respondent accepted that whilst the Applicants would have known

the amount of the deposit in July of 2021 where it was protected, the full extent of the information required to be given in terms of by the Regulations was not given to the Applicants during the tenancy. The Respondent had admitted the breach in so far as the protection of the deposit was concerned before the case management discussion in his written representations. The tribunal accepted that the lateness in protecting the deposit was an oversight on the part of the Respondent and had not been done intentionally. In all the circumstances it appeared that this was an application where a sanction at the lower end of the range of sanctions could be imposed to reflect the circumstances. The tribunal imposed a sanction of sum of £475 to be paid to the Applicants by the Respondent.

Decision

The tribunal determined that the Respondent should pay to the Applicants the sum of £475 having found that the Respondent has breached the duties set out in Regulations 3 and 42 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 in respect of the tenancy between the parties.

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.

V Bremner

Legal Member/Chair

21.7.23
Date
