



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for payment where a landlord has not paid the deposit into an approved scheme in terms of Rule 103 of the Procedure Rules.

Chamber Ref: FTS/HPC/PR/20/0651

Re: 3 Curlew Close, Whauphill, DG8 9NN ("the Property")

Parties:

Matthew Young, Mrs Julia Ortiz- Echeverria (the Applicants")

Industrial and Commercial Advances (1972) Limited ("the Respondents")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal")

Tribunal Member: Jacqui Taylor (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondents should pay the Applicants the sum of £250 by way of sanction under Regulation 10(a) of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

1. Background

The Applicants submitted an application to the Tribunal for payment where a landlord has not paid the deposit into an approved scheme in terms of Rule 103 of the Procedure Rules, which application was dated 21st February 2020.

2. Documents lodged with the Tribunal.

Documents lodged with the Tribunal by the Applicants were:

2.1 A copy of the Scottish Private Residential Tenancy Agreement

2.2 A copy of a letter from Galloway and Ayrshire Properties dated 16th January 2020 with a separate form attached headed 'Prescribed Information about your tenancy deposit.' This form confirmed that the deposit of £500 had been received by the

Landlord on 12th November 2019 and had been paid to Safe Deposits Scotland on 15th January 2020.

3. Direction.

The Tribunal issued a Direction to the parties dated 4th August 2020 in the following terms:

‘Considering that Section 3(1) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 sets out the duties in relation to tenancy deposits and it is in the following terms:

3.—(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 parties are directed to provide the Tribunal with written representations (which can be in the form of an email) as to the date the tenancy deposit should have been paid to the Tenancy Deposit Scheme.’

The Applicants replied stating that the deposit should have been lodged with Safe Deposits Scotland by 16th January 2020. They produced a letter from Safe Deposits Scotland dated 23rd January 2020 which stated that the deposit was protected from 22nd January 2020.

The Respondents’ agent replied advising that the 30 working day period from the commencement of the tenancy expired on 17th January 2020.

4. Case Management Discussion.

This case called for a Case Management Discussion (CMD) Conference call on at 10am on 12th August 2020.

The Applicants attended. The Respondents did not attend but were represented by Victoria Lowe, solicitor.

4.1 Preliminary matter

Mrs Taylor clarified that the Tribunal was only considering the application made under Tribunal Rule 103, being an application under Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011.

She explained the application made by the Applicants referred to compensation as a result of the breach of conditions of the tenancy but she explained that this matter would have to be a separate application to the Tribunal.

4.2 Agreed Facts

The parties confirmed the following agreed facts:

- 4.2.1 The Applicants, were Tenants of the Property and the Respondents were Landlords of the Property in terms of the lease between them dated 22nd and 23rd October 2019. The lease was a Private Residential Tenancy in terms of the Private Housing (Tenancies) Scotland Act 2016.
- 4.2.2 The commencement date of the Tenancy was 1st December 2019.
- 4.2.3 The Applicants vacated the Property on 31st July 2020.
- 4.2.4 The Applicants paid the deposit of £500 to the Landlords on 12th November 2019, prior to the commencement of the tenancy.
- 4.2.5 The deposit had been placed in a tenancy deposit scheme on 22nd January 2020.
- 4.2.6 The parties agreed the deposit had been placed in the tenancy deposit scheme 3 working days late.

4.3 Oral Representations made by the Applicants.

Matthew Young explained that he accepted that the maximum penalty of three times the monthly rent was too much. He said that he considered the sum of between £250 to £500 to be reasonable. He advised that they had vacated the Property on 31st July 2020 and the deposit had not yet been returned to him. He had checked with Safe Deposit Scotland and his application for the deposit to be returned is 'in progress'.

4.4 Oral Representations by The Respondents' representative.

Veronica Love explained that she is a Director of GAP, the letting agent, and also a solicitor of a separate firm. GAP had requested the Deposit to be transferred to Safe Deposits Scotland on 15th January 2020 but due to a delay within the systems of her office the deposit had not been transferred until 22nd January 2020. She conceded that an error had been made. She explained that she considered the maximum penalty to be too high in the circumstances and the penalty should be commensurate with risk. If the Tribunal make an award, she would pay the sum awarded to the Applicants. She explained that her firm has looked more closely at their systems and lessons have been learned.

5 Decision.

5.1 Findings of Fact.

The Tribunal make the following findings in fact:

5.1.1 The Applicants, were Tenants of the Property and the Respondents were Landlords of the Property in terms of the lease between them dated 22nd and 23rd October 2019. The lease was a Private Residential Tenancy in terms of the Private Housing (Tenancies) Scotland Act 2016.

5.1.2 The commencement date of the Tenancy was 1st December 2019.

5.1.3 The Deposit of £500 was paid to safe Deposits Scotland on 22nd January 2020.

5.2 Decision.

Section 3(1) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 provides that the deposit must be paid to the Tenancy Deposit scheme within 30 working days of the commencement of the Tenancy. The Tenancy commenced on 1st December 2019. The bank holidays were 25th December 2019, 26th December 2019, 1st January 2020 and 2nd January 2020. The deposit should have been lodged with Safe Deposit Scotland by 16th January 2020. It was lodged late 6 days late on 22nd January 2020.

The Respondents' representative accepted responsibility for the error made as Director of the letting agent employed by the Respondent. Notwithstanding this fact Section 3(1) places the obligation to lodge the deposit with a Tenancy Deposit Scheme on the Landlords.

In assessing the level of sanction, the Tribunal considered the parties representations. They also considered the following cases:-

- Kirk v Singh 2015 SLT Sh Ct 111
In this case the Sheriff considered the whole circumstances and decided that whilst the defender's default could be characterised as serious it was not at the most serious end of the scale and it is also necessary to have regard to the mitigating circumstances advanced by the defender. Accordingly, in his opinion, the fair, proportionate and just sanction in that case, having regard to the maximum sanction available, was £500. The deposit in that case was £380.
- Darren Rollett and Julia Mackie (2019) UT 45.
Sheriff Ross found that in assessing the level of a penalty charge, the question is one of culpability and the level of penalty requires to reflect the level of culpability. He found that cases at the most serious end of the scale might involve repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant.

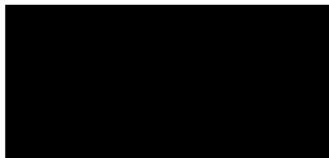
The Tribunal accepted that the Respondents had delegated responsibility for lodging the deposit to his letting agents who had made an error. There was no fraudulent intention or deliberate act on the part of the Respondents. However, the regulations had not been complied with. The Tribunal finds that the default was not at the most serious end of the scale as the Deposit was unprotected for 6 days and the Respondents' letting agency had accepted responsibility for the error and agreed to pay any sums due to the Applicants.

In the circumstances the Tribunal considers it to be fair, proportionate and just to sanction the Respondents for non compliance by awarding the Applicants a sum of £250, being the equivalent of one half of the deposit of £500.

The Tribunal orders the Respondents to pay the Applicants the sum of £250 by way of sanction under Regulation 10(a) of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

6. 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

12th August 2020