



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

Chamber Ref: FTS/HPC/PR/23/0298

Re: Property at 1 Connaught Place, Edinburgh, EH6 4QT (“the Property”)

Parties:

Miss Regina Alonzi, 1 Connaught Place, Edinburgh, EH6 4QT (“the Applicant”)

Colette Scanlon-Riach, 26 Carrick Road, Ayr, KA7 2RB (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £50 in terms of Regulation 10(a) of the Regulations should be made.

This Hearing concerned an Application under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (hereinafter referred to as “the Deposit Regulations”). The purpose of the Hearing being to explore how the parties dispute may be efficiently resolved. The purpose of the hearing was explained and it was understood a final decision could be made. The hearing took place by videoconference.

2. Attendance

The Applicant attended personally.

The Respondents were represented by Emma Ross, Factotum, 63 Dublin Street, Edinburgh EH3 6NS.

3. Preliminary Matters

The Application called alongside an application in terms of Section 48(1) of the Housing (Scotland) Act 2014 and concerned an application by the Applicant against

the Respondents for failure to comply with the Letting Agency Code of Practice in terms of the Letting Agent Code of Practice (Scotland) Regulations 2016 (the code) at paragraphs 19, 62, 68, 73, 82, 83, 84, 85, 86, 88, 91, 92, 94, 107, 111 of the Code. Evidence for both applications were heard separately over a number of days by video conference.

The Case had called for Case Management Discussion and direction before proceeding to evidence.

There were no other preliminary matters.

4. Evidence Summary

For the Applicant

1. The Applicant explained she had never received the right information in terms of the Tenancy regulations and she sought a formal apology, payment order and the correct documents. She went further to say in terms of the prescribed information she had received some of the information but not all. She said in a letter dated 19th April 2023 which had been lodged she had still not received the correct prescribed information and she considers it is not the responsibility of Safe Deposit Scotland do so in reply to the Respondent's position.
2. The Applicant said the Respondent was in breach of section 41 of the Tenancy Scotland Scheme Regulation 2011. She should have received supporting notes and no such leaflet or supporting notes were produced in terms of the Regulations. She submitted that section 42 provides the landlords duty to provide information to the tenant. She had to have received information about the confirmation of the deposit paid and date received and the date paid to scheme administrator, address of property, etc. She referred to the emails sent with her application and the bank screen shot showing £950 was paid Tuesday on 20th December 2022. She received prescribed information back where the deposit paid was noted as 0 and no information in the last 2 boxes provided. The date she received this was the 20th November 2022 and it was incorrect. An email on 4th Jan 2023 was also incorrect. Emma Ross emailed on 20th Jan saying it had been lodged. The Applicant said that in terms of Regulation 42 the document was incorrect.
3. The Applicant said that the Respondent's incorrectly reflected the deposit in 2 separate emails and a formal complaint was made to the Respondents in Jan 2023. She highlighted this to Emma Russ, Natasha Dunellon and Mr Boisseau. The Respondents resent inaccurate information.
4. The Applicant said she made the Respondent and her landlord aware in February 2023 by recorded mail of the error and in March 2023 by whats app group the landlord was a member of. The Applicant said the document received to this date inaccurately reflects the relevant date, whilst the boxes are now filled out the date is wrong and the prescribed information is well out with 30 days. The Applicant informed the Respondent on Monday 30th January 2023 of all attempts she had made to get the correct information. She was told not to contact the landlord again.

5. The Applicant said it was incorrect that Safe Deposit Scotland had the deposit on 28th November 2022 and this is not correct and this could be changed on production of a tenancy agreement from the landlord or the letting agent.
6. The Applicant said that she was resent prescribed information on 6th Feb without warning and she questioned that and asked why she had the attached document. The Applicant said that they were different and one had boxes filled in and one hasn't. There was no clarification. The date received by the landlord of the deposit was still showing November 2022. This was the incorrect date. The full tenancy agreement applied but the amount the Applicant said was now the correct amount but this was well after the 30 days allowed.
7. She advise that the deposit certificate was received on 18th Jan and she asked for supporting particulars and information leaflet and notes. She received an email about Safe Deposit Scotland but was then sent inaccurate prescribed information.
8. The Applicant set out that the consequences for her of the failure to adhere to the regulations was that the letting agents job was not being carried out, she was doing the job for them and it created a lack of trust between parties. The Applicant said her attempts to resolve matters were ignored and she was just passed around. The Applicant said that this was unacceptable and her rights not met. It was frustrating to receive inaccurate information. The area the applicant said is heavily regulated and they have significant tenants and they could not get the matter correct, she was being ignored and has had to take the matter to the Tribunal. The Applicant said she has had to use her time and effort and that one of her children is ill and the time element was significant.

For the Respondent

9. The Respondent's representative said her role was as the assistant office manager. She has a portfolio of flats and the location of this property is one of those. They manage the letting process from start to finish for the property. She has managed this property for a few years now.
10. Miss Ross for the Respondents explained the deposit was lodged with Safe Deposit Scotland timeously and they considered the prescribed information was sent. She said they had been made aware from Safe Deposit Scotland following a system update they carried out that some of the prescribed tenancy terms information had not "pulled through". They became aware of this on a telephone call on the 31st Jan 2023. The Respondents said it had now been rectified and they considered they had given the correct information in early February 2023.
11. The Respondent's representative said that she on 4th January 2023 sent an email to Safe Deposit Scotland with the deposit of £950 and it has been lodged correctly. She said the Respondents had resent the deposit information a few times. They have resent as requested. The Respondent was of the view the correct information had been received whilst the Applicant was clear whilst received it was not accurate.
12. The Applicant's representative said that she emailed Safe Deposit Scotland on 16th Jan and I got the response that they could not change it from Nov to

December when received and they said they could not change it from their side. Safe Deposit Scotland said they were unable to change the date but the account shows the correct date.

13. The Respondent's representative said that the document dated 12th Jan was when she had emailed the Applicant to say she had emailed Safe Deposit Scotland. It was lodged on 20th December 2022 and that she could not change the date as it is dealt with by Safe Deposit Scotland. She said that it showed it had been received. The resent second prescribed information resent on 6th Feb shows the amount paid and received.
14. The Respondent's Representative said the deposit was lodged in the correct timescale. She acknowledged the first prescribed information sent to the Applicant has the missing date and a zero. She said it shows as zero as funds not sent at that point to Safe Deposit Scotland but the monies acknowledged. She said they lodge the deposit online, they pay the invoice and then pay to deposit scheme. Then until that's received from Safe Deposit Scotland it will show as zero. The Respondent's position was that the deposit certificate was £950 but it is not instant as you have to do a transfer to the deposit scheme. The monies were sent in the correct timescale.
15. The Respondent's representative said that she put the December date in and she is not sure why it was November. She said that the document details the phone call with Safe Deposit Scotland. She was not aware of a change in their system after 10 years. They had informed her they had changed their website and system. At the time she recalled there were quite a few errors on the system and to this day the office continues to question them about this. The change happened and they were not given any advice or notice as to what would change. The Respondent's representative said that one of them was the clauses would be automatic and they did not say it would be deleted. She said she called the Safe Deposit Scotland office and then went on to their website. She repopulated the details and resent it to the Applicant. She was of the view that if she resent the information within 28 days of the tenants requests they were still set in the correct time frame. The Respondents representative said that she sent an email on 12th January 2022 asking to change the date of the deposit received from the 20th November 2022 to the 20th December 2022 and they said it can't be changed. The Respondent said she emailed the Applicant and explained why it showed as zero.

5. Submissions

The Applicant's submissions was that Regulations 42 were breached by the Respondent, namely:

Landlord's duty to provide information to the tenant

42.—(1) The landlord must provide the tenant with the information in paragraph (2) within the timescales specified in paragraph (3).

(2) The information is—

(a) confirmation of the amount of the tenancy deposit paid by the tenant and the date on which it was received by the landlord;

(b) the date on which the tenancy deposit was paid to the scheme administrator;

(c) the address of the property to which the tenancy deposit relates;

(d) a statement that the landlord is, or has applied to be, entered on the register maintained by the local authority under section 82 (registers) of the 2004 Act;

(e) the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid; and

(f) the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement.

(3) The information in paragraph (2) must be provided—

(a) where the tenancy deposit is paid in compliance with regulation 3(1), within the timescale set out in that regulation; or

(b) in any other case, within 30 working days of payment of the deposit to the tenancy deposit scheme.

The Applicant said it was not Safe Deposit Scotland's responsibility to meet the Regulations. The Applicant said she sought the heaviest possible sanction of 3 times the amount of her deposit and training for staff.

For the Respondent

The submission for the Respondent's was that the first prescribed information was sent without information in the boxes but as soon as they found out about that and that the information was lacking and missing it was rectified and immediately was resent. The second correct prescribed information was sent out. That was done the monies sent were received. The money had been lodged. They acknowledged the information was lacking and the Respondent's went on immediately to rectify errors. Safe Deposit Scotland updated their website and the updates affected the information. The submission was that there was no breach of the legislation. The deposit was lodged in time.

6. Findings in Fact

- 1. The Applicant entered into a Private Residential Tenancy agreement for the property on 15th December 2022.**
- 2. The date of entry was agreed as the 28th December 2022.**
- 3. The deposit for the PRT was £950. This was paid by bank transfer by the Applicant to the Respondents letting agency on 20th December 2022 at 12:18.**
- 4. The Respondent's letting agency on 4th January 2023 in terms of the Tenancy Deposit Regulations send to the Applicant an email with the**

- prescribed information. The letting agency advice they would send the Applicant certificate for the deposit when received.
5. The prescribed information correctly noted the landlords details, the registration of the landlord and the address of the property.
 6. The prescribed information incorrectly noted the date of the deposit being received as the 20th November 2022 and not the 20th December 2022 as well as the deposit amount being zero rather than £950.
 7. The Respondent did not provide the prescribed information as necessary to the Applicant in terms of Regulation 3.
 8. On 6th January 2023 the Respondent's letting agency further confirm that the deposit was being bank transferred to Safe Deposit Scotland that day and that a certificate would be issued and forwarded to the Applicant.
 9. On 18th January 2023 the Respondent's letting agency forwards a copy of the certificate from Safe Deposit Scotland to the Applicant confirming the deposit is secured.
 10. On the 14th and 15th February 2023 the Applicant is sent further information from the Respondent's letting agent confirming that they had resent the prescribed information to show that Safe Deposit Scotland had been allocated the deposit monies.

7. Reasons for Decision

- a) This application is made in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011. The application related to the landlord having received a tenancy deposit being under the mandatory duty to (within 30 days of the beginning of the tenancy) to pay the deposit to the administrator of an approved scheme and to provide the tenant and the Applicant here with the information required under Regulation 42. Regulation 42 specifies the information which must be provided. This application seeks an order in terms of Regulation 9 for a failure to provide the prescribed information. In terms of Regulation 10

if satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—

(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and

(b) may, as the sheriff considers appropriate in the circumstances of the application, order the landlord to—

(i) pay the tenancy deposit to an approved scheme; or

(ii) provide the tenant with the information required under regulation 42.

- b) The FTT was satisfied that the Respondent did not provide the tenant with the information required under Regulation 42 as required by Regulation 3. The

FTT was provided a copy of the prescribed information and the same did not specify all of the information required in terms of Regulation 42.

- c) If the FTT was satisfied a breach of the regulations had occurred the FTT had to make an order in terms of Regulation 10. In terms of Regulation 10 the FTT is obliged to make an order up to 3 times the deposit of the applicants to the respondent. When considering the Order and level of sanction the FTT must have regard to the severity of the breach and any mitigating factors.
- d) The deposit was not in question it had been secured appropriately. The Respondent had provided prescribed information but this was incomplete or at most inaccurate. The Applicant had highlighted this and there was significant email communication between both parties to explain the error. They also explain there had been a change in the IT systems of Safe Deposit Scotland and this had brought about the error. They sought to reassure the Applicant that the deposit was received, secured and that the certificate confirming same would be issued. The Applicant received the certificate.
- e) In the case of *Jenson v Fappiano* 2015 G.W.D 4-89 in relation to the amount of such an Award under regulation 10 of the Regulations it was noted that a judicial analysis of the nature of the non-compliance was required and a value attached to reflect a sanction which was fair and proportionate and just given the circumstances. It was further noted that the Sheriff said in said case that the value was not the starting point of three times the deposit minus the mitigating factors it was what was fair and proportionate in the exercise of balanced judicial discretion. The Court of Session in *Tenzin v Russell* 2015 Hous. L.R 11 held that any payment in terms of Regulation 10 of the Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case.
- f) The FTT heard evidence from both parties. The case was difficult and the Applicant whilst credible as a witness had been unable to accept the errors made and sought determination. The Respondent's representative was also credible and the correspondence lodged by both parties showed the clear communication at the relevant time regarding the prescribed information. FTT was therefore of the view that an Award should be made in the minor end of the scale as the deposit had been secured throughout the tenancy and whilst information had been provided it had not complied fully with Regulation 42 and was incorrect and incomplete. This was minor and the FTT saw significant email correspondence from the Respondent's letting agency setting this out and explaining the error. Accordingly in balancing the circumstances of both parties and the nature of the failure in its discretion it found the Applicant entitled to a nominal award of £50 for the error. There was a clear lack of trust of relationship between parties such that neither party was prepared to look at the matter practically and sought determination of whether there was a breach of the Regulations, however minor.

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

26th October 2023

Date