



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 3 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/23/1764

Re: Property at 17/12 Milton Street, Edinburgh, EH8 8EZ (“the Property”)

Parties:

Mr Samer Fadel, 2/8 Meadowbank Avenue, Edinburgh, EH8 7AP (“the Applicant”)

Mr Lloyd Kilbride, 17/12 Milton Street, Edinburgh, EH8 8EZ (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment in the amount of £1500 should be made.

Background

1. The Applicant lodged an application on the 30th May 2023 under Rule 103 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) seeking a sum under the Tenancy Deposit (Scotland) Regulations 2011.
2. Lodged with the application were:
 - a. Booking form to rent a room dated 14th September 2022
 - b. Various emails between the parties
3. The papers were served on the Respondent by Sheriff Officers on 20th June 2023.

Case Management Discussion

4. The Case Management Discussion (“CMD”) took place by teleconference. The scheduled time was 11.30. By 11.35 neither party had joined the call. The Chairperson asked the Clerk to telephone the Applicant. The Clerk discovered that he was holding on a different conference line, having been given incorrect dial in details by the Tribunal’s administration. The Clerk then telephoned the Respondent. There was no reply. She checked and he was not holding on the other line.
5. The Chairperson confirmed that, in terms of Rule 2 of the Tribunal’s Rules, the overriding objective of the Tribunal was to act justly. Given that the Tribunal’s administration had provided the parties with incorrect dial in details and given that the Clerk had not been able to reach the Respondent by telephone, the Chairperson advised that she felt she had no choice but to adjourn the CMD to another date.
6. The Chairperson issued a Direction to the Applicant seeking production of the original advert, if available. The Applicant responded on to say that the advert was no longer available, but he did produce the most recent adverts.
7. The Chairperson issued a Direction to the Respondent asking for proof that the deposit had been ledged in a scheme and a written note of the Respondent’s position. The Respondent did not respond to the Direction.
8. A fresh Case Management Discussion was fixed and the parties were notified,
9. On 2nd October 2023 the Respondent sent an email to the Tribunal advising he had been out of the country, and asking for a copy of all papers sent to him since 14th June.
10. On 6th October 2023 the Tribunal responded, sending copies of the papers by email and confirming that the CMD was to take place on 9th October 2023 at 10am.

Continued Case Management Discussion

11. The Case Management Discussion (“CMD”) took place by teleconference. The Applicant represented himself. The scheduled time was 10.00. By 10.05 the Respondent had not joined the call. The Chairperson was satisfied that the Respondent had had notice of the CMD and decided to proceed.
12. The Chairperson introduced everyone and explained the purpose of a CMD in terms of Rule 17.
13. The Applicant said that the property was a three bedroom flat. Each bedroom was occupied by separate parties, and they had shared access to the kitchen/dining area, living room, and bathroom.

14. The Applicant confirmed that he had moved in to the room in the flat on 30th September 2023. He signed a booking form for the period from 1st October 2022 to 1st November 2022. He paid a deposit of £900.
15. The Applicant wanted a smaller room, and after the first month he moved to that room. The rent was £900 per month and the deposit was £600. The Respondent took the deposit for the first room as the first month's rent for the smaller room, and the Applicant paid another £600 by way of deposit for the smaller room. Another booking form was signed, covering the period 1st November 2022 to 31st March 2023.
16. The Applicant confirmed that the Respondent had not lived in the flat at any time during his tenancy.
17. The Applicant confirmed that he had not received any notification of the Respondent having lodged his tenancy deposit in an approved scheme.
18. The Applicant confirmed that he had made it clear to the Respondent that he was coming to Edinburgh to study at Edinburgh University, and there was no chance that the Respondent could have interpreted that as the Applicant coming to Edinburgh for a holiday.
19. The Applicant confirmed that the property was his principal residence while he resided there.
20. The Applicant told the Tribunal that the Respondent came to his current residence on 26th September 2023 to attempt to negotiate but when the Applicant would not agree to his proposals the Respondent was unhappy.

Findings In Fact

1. The Applicant entered in to an agreement to rent a room at the property from the Respondent from 1st October 2022 to 1st November 2022;
2. The Applicant entered in to an agreement to rent a different room at the property from the Respondent from 1st November 2022 to 31st March 2023;
3. The Applicant did not rent the room as a holiday let;
4. The Applicant rented the room as his only or principal home;
5. The Respondent did not occupy any part of the property during the Applicant's period of occupation;
6. The tenancy was a Private Residential Tenancy in terms of the Private Housing (Tenancies)(Scotland) Act 2016
7. The Applicant paid a deposit of £6000 to the Respondent;
8. There is no evidence to suggest that the Respondent paid the deposit in to an approved scheme;
9. The Applicant vacated the property on 1st March 2023;
10. The Respondent did not return the deposit to the Applicant.

Reasons For Decision

21. The Application has been brought under the Tenancy Deposit (Scotland) Regulations 2011, based on an alleged failure of the Respondents of his duties under Regulation 3, and seeking a payment in terms of Regulation 10.

22. Section 1 of the Private Housing (Tenancies)(Scotland) Act 2016 defines a private residential tenancy as follows:

1. Meaning of private residential tenancy

(1) A tenancy is a private residential tenancy where—

(a) the tenancy is one under which a property is let to an individual (“the tenant”) as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant’s only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

23. None of the exemptions in Schedule 1 apply. The tenancy here is clearly a Private Residential Tenancy in terms of the Act, and falls within the jurisdiction of the Tribunal.

24. In terms of the Act writing is not required to constitute a tenancy and, if there is nothing in writing, in terms of section 7 of the Act the statutory terms of a Private Residential Tenancy in are implied.

25. The Tenancy Deposit Schemes (Scotland) Regulations 2011 therefore apply.

Regulation 3 is as follows:

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.

(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.

(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—

(a) in respect of which the landlord is a relevant person; and

(b) by virtue of which a house is occupied by an unconnected person,

unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.

(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.

Regulation 10 is as follows:

10. If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal—

(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 First-tier Tribunal 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.

26. Regulation 3 imposes an obligation on a landlord who has received a tenancy deposit in connection with a relevant tenancy and the obligation is to place it in to an approved scheme within 30 working days of the beginning of the tenancy. The Respondent has not done so.

27. The Tribunal has discretion in deciding what the Respondent should be ordered to pay. Serial offenders, i.e. landlords with multiple properties who do not place deposits in schemes are at the upper end of the scale. The current case is serious, as there appears to be an attempt to use a different type of agreement to defeat the obligations imposed on a landlord by the private tenancy legislation. Renting out a property is a commercial decision and there are laws and regulations in place to protect parties who enter in to tenancy agreements. These must be complied with.

28. The reason for the Regulations are to protect the tenant's deposit, as the money belongs to the tenant, and also to provide a fair and impartial mechanism for adjudicating on whether a deposit should be returned to a tenant or some or all be retained by the landlord. The Respondent did return the deposit to the Applicant in full at the end of the term.
29. The Tribunal has power to award a sum equivalent to up to three times the amount of the deposit.
30. The Tribunal considered this case to be serious. The Respondent has not used the correct type of tenancy agreement, he has not returned the deposit and he has not responded by attending the Tribunal.
31. In all the circumstances the Tribunal has decided to order the Respondent to pay to the Applicant the sum £1500.

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.

A Kelly

9th October 2023

Legal Member/Chair

Date