



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

Chamber Ref: FTS/HPC/PR/23/3339

Re: Property at 11b Mill Lane, Edinburgh, EH6 6TJ (“the Property”)

Parties:

Jana Thomson, Flat 0/1, 56 Aitken Street, Glasgow, G31 3PW (“the Applicant”)

Elaine Mathieson, 11b Mill Lane, Edinburgh, EH6 6TJ (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and Helen Barclay (Ordinary Member)

Decision

[1] The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) made an award in terms of Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 ordering that the Respondent pay the Applicant the sum of £1,350.00 pounds, being an amount equal to three times the value of the relevant tenancy deposit.

Background

[2] The Applicant seeks an award under the Regulations in respect of the failure of the Respondent to place a tenancy deposit in an approved scheme as required by Regulation 3. The Respondent had submitted representations acknowledging the breach and putting forward some background information which she wished the Tribunal to consider. The Application had called for a Case Management Hearing and then been continued to an evidential Hearing for evidence to be heard and a final decision made.

The Hearing

[3] The Application called for a Hearing by conference call at 10 am on 5 April 2024. The Applicant was present along with her representative, Ms Simpson of Govan Law Centre. The Respondent was personally present. Neither party had any preliminary matters to raise. The Tribunal began hearing evidence from the Applicant. The Tribunal then heard evidence from the Respondent. Each party had the right to cross-examine the other and following on from the conclusion of evidence, each party had the opportunity to make closing submissions.

[4] The Tribunal comments on the evidence heard as follows.

Jana Thomson

[5] Ms Thomson gave evidence in a straightforward manner. The issues involved were straightforward to understand. She moved into the Property on 23 June 2016. She paid a deposit of £450.00. She reminded the Respondent about paying it into an approved scheme at the time. The Respondent emailed her back saying that she normally just “*paid it into an ISA*” but that “*she would look into it*”. The Applicant explained that she never did and simply kept the deposit in an ISA. The Applicant explained that she was friends with the Respondent throughout the tenancy, but the relationship deteriorated and they ended on bad terms. The Applicant was short of money when she moved out and was asked to leave by the Respondent who didn’t give any formal legal notice of any description. The Respondent then returned some of what the Respondent described as the balance of the deposit to the Applicant, less further rent said to have been due by the Respondent. The Applicant explained that she had mental health difficulties and had in fact tried to take her own life around the time of the end of the tenancy.

[6] The Tribunal found no reason not to take the Applicant’s evidence at face value. It was also fully corroborated by the relevant emails which were before the Tribunal.

Elaine Mathieson

[7] The Respondent’s evidence was that she made an oversight and forgot to register the deposit because she had issues in her personal life. She explained that she did put the money in an ISA and accepted that ultimately she attempted therefore to make a profit on the deposit instead of following the Regulations. The Tribunal found the Respondent’s evidence to be somewhat superficial. The Reality was that she was put on notice about the rules by the Applicant but instead of doing what she said would do and “*Look(ing) into*” (the regulations) she attempted to make a profit. The Respondent also came across as casual to the point of being reckless about what was involved in operating lawfully as a landlord. The Respondent described taking some advice from the Glasgow City Council who sent out some emails from their Private Landlord Registration Department. She explained though that she didn’t feel she needed to do

much because “*it wasn’t too taxing.*” The Respondent also appears to have encouraged the Applicant to leave the Property without following any formal legal procedures. The Tribunal acknowledged that the Respondent may very well have had issues in her personal life that distracted her from her duties as a landlord, but the Tribunal was left with the impression that the Respondent didn’t ever treat these obligations as a priority. The fact that the Respondent made a profit from holding the deposit in an ISA made it hard for the Tribunal to view her position with much sympathy.

[8] Having heard from parties, the Tribunal made the following findings in fact.

Findings in Fact

- I. *The parties entered into a tenancy agreement whereby the Respondent let the Property to the Applicant by virtue of a tenancy agreement dated 23 June 2016;*
- II. *The Applicant paid the Respondent a deposit of £450.00;*
- III. *On 23 July 2016, the Applicant enquired with the Respondent about registering the deposit in an approved scheme as she had not received any confirmation of that;*
- IV. *The Respondent replied saying that she had “always just put the deposit in an ISA for safe keeping” but that she would “look into this”;*
- V. *On 4 May 2023, the Respondent contacted the Applicant and advised that she required to sell the property. The Applicant emailed the Respondent on 22 May 2023 to confirm that she had managed to find alternate accommodation and that she would be able to leave the tenancy in 28 days;*
- VI. *It was agreed that the tenancy would terminate on 19 June 2023. The Applicant left the Property on this date;*
- VII. *The Respondent deducted £285.00 from the Applicant’s deposit in respect of the rent owed for the last partial month of the tenancy as calculated by the Respondent;*
- VIII. *The Applicant emailed the Respondent on 20 June 2023 as the remaining £165.00 had not yet been received. £165.00 was then paid by the Respondent to the Applicant on 20 June 2023;*

- IX. *The Respondent failed to comply with Regulation 3 to pay the deposit paid by the Applicant into an approved tenancy deposit scheme within 30 working days of the commencement of the tenancy;*

Reasons for Decision

[9] Having made the above findings in fact, the Tribunal had to determine what, if any, award ought to be made under Regulation 10. The Tribunal proceeded on the basis that the determination of the award required the Tribunal to exercise its judicial discretion to consider what would be fair, proportionate and just.

[10] The Tribunal took into account the substantial period of time in which the deposit was unprotected and also the fact that the Applicant had even put the Respondent on notice about the Regulations at the outset of the tenancy. The Respondent placed the deposit in an ISA and then ignored the Applicant's reminders. The Respondent would have profited from her wilful or reckless breach had this Application not been raised. The Tribunal also considered the Respondent to be casual in her approach to her legal obligations. It is of note that when she asked the Applicant to leave the Property, at no point was any formal legal notice given. The Respondent herself described managing the tenancy as "*not taxing*" which can be interpreted as akin to saying that it was easy and so she didn't feel the need to do things properly and in accordance with applicable legislation. The Tribunal saw no reason to treat this breach with leniency or consider that there was any mitigation that ought properly to influence the order made. The Tribunal however did discount the personal animosity between the parties at the end of the tenancy. It seemed irrelevant that bad blood appeared to have developed. The rights and wrongs of the personal fall out was not something the Tribunal felt it ought to determine in order to consider what award to make.

[11] The Tribunal considered that the highest sum ought to be awarded in terms of Regulation 10 which is a sum equal to three times the sum of the deposit of £450, being £1,350.00.

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.



ANDREW MCLAUGHLIN

Legal Member/Chair

5 April 2024

Date