



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

Chamber Ref: FTS/HPC/PR/24/0860

Re: Property at 129 Windmill Road, Kirkcaldy, KY1 3AW (“the Property”)

Parties:

Mr Marcin Rymkiewicz, 129 Windmill Road, Kirkcaldy, KY1 3AW (“the Applicant”)

Ms Helena Hamilton, The Yard, Milton Road, Windygates, Leven, KY8 5DF (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member)

Decision

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

Background

1. The Applicant lodged an application on the 20th February 2024 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. Tenancy Agreement between the parties which purported to be a Short Assured tenancy but was not signed and had no initial term, but did give a commencement date of 8th December 2014 and showed a deposit of £450;
 - b. Receipt for the deposit payment;
 - c. Emails from the three tenancy deposit schemes confirming that the deposit is not lodged with them.

3. The papers were served on the Respondent by Sheriff Officers on 9th May 2024.
4. On 27th May 2024 the Applicant's agent lodged a Written Submission reiterating what was in the application form.
5. On 31st May 2024 the Respondent's solicitor lodged a Written Submission, In the submission the solicitor said that the Respondent conceded that she had not lodged the deposit in a scheme, but had now done so, and produced a screenshot of a bank account showing a payment of £450 being made to Safe Deposits Scotland on 31st May 2024. She said that the Respondent only rented out this property and had no previous experience of being a landlord. She had got the style lease from a friend and was not aware that the deposit needed to be lodged in a scheme. At all times during the tenancy she had sufficient funds to repay the deposit. The solicitor submitted that the case was not at the serious end of the scale. It was not a wilful default and the tenancy continues so therefore the Applicant's position is now protected.

Case Management Discussion

6. The Case Management Discussion ("CMD") took place by teleconference. The Applicant was represented by Miss Watson of Frontline Fife. The Respondent was represented by Miss Herbert of Lynn Herbert & Co, Solicitors.
7. The Chairperson introduced everyone and explained the purpose of a CMD in terms of Rule 17.
8. The Chairperson asked Miss Watson if she had anything to add to her written submissions. She said that the Applicant has not received any notification from the tenancy deposit scheme that the deposit has been lodged, he is only aware of it because he has received the respondent's Written Submissions.
9. The Chairperson asked Miss Herbert if she had anything to add to her written Submissions. She said that the Respondent had contacted her to say that she was having technical issues with the website of the tenancy deposit scheme when trying to lodge the deposit, but that these were being dealt with.
10. The Chairperson confirmed that she was content to deal with matters on the basis of the Written Submissions and without the need for an evidential hearing.

Findings In Fact

- i. The Applicant entered in to a tenancy agreement for the property on 8th December 2014;
- ii. The Applicant paid a deposit of £450 to the Respondent;
- iii. The Respondent did not pay the deposit in to an approved scheme within 30 working days of the commencement of the tenancy;
- iv. The Respondent paid the deposit to SafeDeposits Scotland on 31st May 2024.

Reasons For Decision

11. The Application has been brought under the Tenancy Deposit (Scotland) Regulations 2011, based on a failure of the Respondent of her duties under Regulation 3, and seeking a payment in terms of Regulation 10.

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.

12. There was no question of credibility or reliability to be determined. The parties were agreed on the facts. The Respondent was candid in admitting that she had not placed the deposit in a scheme.
13. 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.
14. 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. Renting out a property is a commercial decision/running a business, and there are laws and regulations in place to protect parties who enter in to tenancy agreements. These must be complied with. The reasons 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 Tribunal has power to award a sum equivalent to up to three times the amount of the deposit.
15. The Tribunal considers this case was in the middle of the scale. The Respondent rents out only one property. She is not a serial offender. However, the deposit has been unprotected for nearly ten years, which is a significant period of time. The Respondent should have been aware of her obligations as a landlord, she should have researched them prior to renting out the property. The Tribunal considers that a penalty of £675 is appropriate.

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.

Alison J Kelly

Legal Member/Chair

Date

13/06/2024