



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/PR/24/0789

Re: Property at 2 Gowanbrae, Lenzie, G66 4BA (“the Property”)

Parties:

Mr Ajay McLaren, 4 Margaret Court, Lennoxton, G66 7AG (“the Applicant”)

Mr Peter Jackson, 26 Hawthorn Avenue, Lenzie, G66 4RA (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

FACTUAL BACKGROUND

1. The Applicant leased the Property from the Respondent. The copy lease produced to the Tribunal was unsigned and un-dated but it was a matter of agreement between the Parties that a lease existed, although it is now at an end.
2. A tenancy deposit of £761.00 was paid by the Applicant to CODA Estates at the commencement of the lease.
3. On 16 November 2023 the Applicant advised the Respondent he was terminating the lease. Notification was given by text message and referred to the condition of the Property as the reason for terminating the lease.
4. It thereafter became known to The Applicant that his tenancy deposit had not been lodged with an authorised Tenancy Deposit Scheme as required by the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the TDS Regs”)
5. The Respondent knew, or at least became aware, that the tenancy deposit had not been lodged with an approved scheme.

6. The Respondent did not accept that there were any issues with the condition of the Property for which he was responsible. Rather, the Respondent considered the Applicant was responsible for certain condition issues. In addition, the Respondent considered there was rent due from the Applicant having regard to the short notice given of his departure.
7. There was a disagreement between the Parties in relation to these matters. Ultimately the Respondent, who was then in possession of the deposit funds, retained £550.00 of the deposit funds and returned £211.00 to the Applicant.
8. The Applicant subsequently presented an application to the Tribunal seeking a penalty be imposed upon the Respondent for failure to comply with the TDS Regs.

THE CASE MANAGEMENT DISCUSSION

9. Both Parties participated personally in the Case Management Discussion. The Respondent had previously forwarded written submissions explaining his position. In summary these were as follows:-
 - Part of the deposit was retained as the Applicant left without giving notice.
 - By law the Applicant required to give at least one month's notice. As a result, the Respondent retained the equivalent of one month's rent from the deposit.
 - The Applicant cannot claim ignorance of this.
 - Only one set of keys was returned.
 - He "initially wanted to arrest money for defects" but "relented" and "gave them the balance of £211."
 - The Respondent cast doubt on the credibility of the reason given by the Applicant for terminating the tenancy suggesting the reason, in part at least, was due to disputes the Applicant had with neighbours.
 - The Respondent did not accept there was an issue with mould at the Property, as suggested by the Applicant, pointing out he has a Bachelor of Science degree in land economics, is a chartered surveyor and has had a house building company for over 40 years.
 - During a meeting between the Parties the Applicant raised the issue of compensation due to the mould he believed was affecting the Property.
 - Following the termination of the tenancy a survey disclosed defects for which the Respondent believed the Applicant was responsible. He initially wished to retain all of the deposit but thereafter returned the balance after deduction of one month's rent.
 - The failure to lodge the deposit with an approved scheme was an oversight. He believed CODA Estates had attended to this. It became apparent they had not when the Applicant asked for the deposit to be returned.
 - He believes he had a right in terms of the lease to retain deposit funds.

10. While the written submissions of the Respondent suggested the failure to lodge the deposit with an approved scheme was an oversight by CODA Estates, when asked where the deposit funds had been held throughout the tenancy, he advised they were held by his sister. While he was the landlord in the lease, the Property was actually owned by a family trust. His sister was mainly responsible for the operation of the trust, but he was responsible for the lease.
11. When asked why the deposit funds were not lodged with an approved scheme when the "oversight" became apparent, the Respondent advised he was not aware that could be done. It is notable, however, that when justifying his retention of some of the deposit for rent he believed was due, he stated "Mr McLaren cannot claim ignorance of this..."
12. Given the position of the Respondent, there can be no dispute that there was a failure to comply with the TDS Regs. The tenancy deposit ought to have been lodged with an approved scheme within 30 working days of receipt. It was never lodged at any stage.
13. At the end of the tenancy, had the deposit been held by an approved scheme, the Applicant would have been able to make use of the cost free dispute resolution process operated by those schemes. The Applicant was denied the ability to do so. Given there was a disagreement between the Parties about the condition of the Property and who was financially responsible for their respective complaints, the ability to use the dispute resolution process would have been of benefit.

REASONS FOR DECISION

14. In considering the appropriate penalty to be imposed the purpose of the TDS Regs must be borne in mind. The scheme is designed to protect tenants from errant landlords who previously obtained deposit funds then, at the end of a tenancy, failed to return them claiming justification for retaining the deposit or part thereof. This created a power imbalance between the landlord and tenant, the landlord being in possession of the deposit funds (assuming they had not already been used for other purposes) with the tenant being in a position whereby it was not financially viable to obtain legal advice or raise proceedings with a view to disputing any claims made by the landlord against the deposit funds.
15. The TDS Regs are designed to ensure that, firstly, the funds are retained throughout the tenancy and, secondly, if there is any dispute at the end of the tenancy, an independent, cost free dispute resolution process is available to resolve any issues.
16. In this case the Tribunal considered the breach of the TDS Regs was at the upper end of cases which come before the Tribunal for the following reasons:-

- There was no explanation for the failure to lodge the deposit funds.
- The suggestion there was an “oversight” is one to which little weight could be given having regard to the suggestion the oversight was allegedly on the part of CODA Estates, but the deposit funds were not, in fact held by them, instead being held by a relative of the Respondent.
- In many cases the TDS Regs are breached due to funds not being lodged timeously. In this case they were never lodged at all.
- Even when it became known to the Respondent the funds had not been lodged, they still were not lodged.
- In many cases when it becomes apparent, at the end of a tenancy, that the deposit funds have not been lodged with an approved scheme, the deposit funds are returned in full to tenants. That did not happen in this case.
- The Respondent decided himself he was entitled to retain the deposit funds, or at least part of them.
- The Respondent referred to compensation being claimed by the Applicant but did not accept any compensation was due.
- The ability to use the cost free dispute resolution process available through approved tenancy deposit schemes was denied to the Applicant as a result of the failure to lodge the funds.
- The Respondent was in a position of power in relation to the Applicant and used that power to his advantage.
- The Respondent completely defeated the purpose of the TDS Regs and deprived the Applicant of important legal rights which should have been available to him.

17. In assessing the level of penalty to be imposed the Tribunal was conscious that the penalty is exactly that – a penalty imposed upon the landlord for a breach of the TDS Regs. It does not include any element of compensation for the tenant.

18. The Tribunal must have regard to the circumstances of each case. The Tribunal must, in appropriate cases, impose a penalty which is likely to deter other landlords from acting in a similar manner in future.

19. In this case there was a clear, continuing breach for which there was no excuse. The purpose of the TDS Regs was utterly defeated. There was an abuse of power by the Respondent resulting in him retaining a significant part of the deposit.

20. The only mitigating factors are that part of the deposit was returned and the Respondent is not an experienced landlord. The Tribunal gave no weight to his claims of ignorance of the TDS Regs, particularly having regard to his own written submissions stating in clear terms that the Applicant “cannot claim ignorance” of claims against the deposit by the Respondent.

21. The Tribunal did consider making an order that the deposit funds now be lodged with an approved scheme which would enable the Applicant to now use the dispute resolution process available. The Applicant, however, advised that given the passage of time that is not something he wished the Tribunal to do.
22. But for the mitigating factors the Tribunal would have imposed the maximum penalty available to it, that being £2,383.00. Taking account of the mitigating factors the Tribunal restricted the penalty to £1,500.00.
23. The Respondent did not wish the Tribunal to consider a time to pay direction.

DECISION

The Tribunal granted an order against the Respondent for payment of the sum of ONE THOUSAND FIVE HUNDRED POUNDS (£1,500.00) STERLING to the Applicant

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.

Virgil Crawford

1 July 2024

Legal Member/Chair

Date