



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/23/3064

Re: Property at 102/50 Commercial Street, Edinburgh, EH6 6LS (“the Property”)

Parties:

Miss Marise Treseder, 72 May Avenue, Orpington, BR5 2ED; Mr Thomas Cartwright 129/1 High Street, Dalkeith EH22 1BE (“the Applicants”)

Mr Ross Gregor, Mrs Erin Waugh, The Smithy, Mossend, EH 23 4NL “the Respondents”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and Gerard Darroch (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 Respondents pay the Applicants the sum of £2,400.00, being an amount equal to two times the value of the relevant tenancy deposit.

Background

[2] The Applicants seek an award under the Regulations in respect of the failure of the Respondents to place a tenancy deposit in an approved scheme as required by Regulation 3. The Respondents have submitted representations acknowledging the breach and putting forward some background information which they wished the

Tribunal to consider. The Application had called for Case Management Discussions 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 6 August 2024. The Applicants was personally present. The Respondents was also personally present. Neither party had any preliminary matters to raise. The Tribunal considered that, as it was admitted that there had been a breach of the Regulations, the Tribunal ought to hear evidence from the Respondents first. The Tribunal began hearing evidence from the First Respondent, Mr Gregor. The Respondents did not wish Ms Waugh to give evidence. The Tribunal then heard evidence from the Applicants. Each party had the right to cross-examine the other and following on from the conclusion of each witness's evidence, each party had the opportunity to make closing submissions addressing the Tribunal on how it ought to decide the Application.

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

Ross Gregor

[5] Mr Gregor is 30 years of age, and his principal occupation is as a shopkeeper. He acquired the Property from his father, who is a property developer, when he was aged 19. He currently owns two properties which are let out as private rental properties. He explained that he had one tenant in this Property before the Applicants took occupation in June 2021. Mr Gregor explained that he was aware of the Regulations and had registered the previous tenant's deposit in an approved scheme. He explained that he had intended to do likewise with the Applicants' deposit. The deposit had been received by Mr Gregor in May 2021 by payment into his personal bank account. The funds were not ring-fenced and were received into Mr Gregor's personal current account. The rent was similiary paid into this account. There was no separate business or rental account that held these funds separately. Mr Gregor explained that he recalls logging onto the Safe Deposit Scotland website but that he must have failed to follow through and complete the process by actually lodging the £1,200.00 deposit funds received.

[6] Mr Gregor then explained that he had been distracted around this time by being ill with covid and having to isolate. He also explained that Ms Waugh also had covid. Mr Gregor also explained that one of his close relations had also had a baby around this time. Mr Gregor thought nothing more about the deposit until he came to contemplate the end of the tenancy in around April 2023. He logged onto his Safe Deposit Scotland Account and saw that no deposit had been received. He quickly paid the sum in. He didn't inform the Applicants about the breach. The Respondents then left the Property on 1 June 2023. They received their deposit back in full swiftly thereafter. It was only

later on that the Respondent disclosed to the Applicants that the deposit hadn't been protected. Mr Gregor did not disagree with the proposition that by keeping quiet about the breach, he had hoped he might have "gotten away with it". However, after the end of the tenancy, the Applicants continued to ask questions about the deposit and Mr Gregor eventually disclosed to them that there had been a breach sometime in August 2023. Mr Gregor's position was that he had not intended to breach the Regulations and it had been a simple oversight. He asked the Tribunal to note that the deposit itself had been eventually registered and was then returned in full to the Applicants without any protest.

[7] Having heard from the Respondent, the Tribunal then heard from the First Applicant, Ms Marise Treseder.

Marise Treseder.

[8] Ms Treseder gave evidence about the whole circumstances of her realisation that her deposit had been unprotected and the effect it had had on her. It had caused significant stress to both Applicants and taken up considerable time. The Second Applicant, Mr Thomas Cartwright gave evidence but only to a very limited extent and simply to echo the evidence given by Ms Treseder. He did however also point out that there was a period of time prior to 5 April 2023 when the deposit was eventually registered, when the Applicants knew that their deposit was not protected and this caused them anxiety.

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

Findings in Fact

- I. *The Applicants paid the Respondents a deposit of £1,200.00 as a relevant tenancy deposit within the meaning of the Regulations on 27 May 2021;*
- II. *On 25 June 2021, the parties entered into a tenancy agreement by which the Respondents let the Property to the Applicants by virtue of a Private Residential Tenancy;*
- III. *The deposit was not registered by the Respondents in an approved scheme until 5 April 2023;*
- IV. *The Respondents failed to comply with Regulation 3 to pay the deposit paid by the Applicants into an approved tenancy deposit scheme within 30 working days of the commencement of the tenancy;*

Decision

[10] 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.

[11] In forming its approach to where this particular breach sat on the scale of sanctions open to the Tribunal, The Tribunal considered that were certain factors that weighed towards both leniency and severity. The Tribunal considered that the fact that the Respondents had paid the deposit back immediately in full at the end of the tenancy weighed in favour of leniency. However, this had to be balanced with factors which weighed in favour of a more serious sanction. These factors were the casual approach to the deposit shown by the Respondents, the length of time the deposit was left unprotected and also the decision not to be completely transparent and inform the Applicants as soon as the breach was realised or even reasonably soon thereafter. Those factors precluded an award at the lowest end of the scale. The Tribunal decided that the breach ought neither to be treated at the lower end nor the higher end of the scale of options open to the Tribunal. It ought to be treated as being at the middle end of the scale.

[12] The Tribunal considered that the sum to be awarded in terms of Regulation 10 ought to be a sum equal to two times the sum of the deposit of £1,200.00, being £2,400.00.

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

6 August 2024

Date

