



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

Chamber Ref: FTS/HPC/PR/24/1628

Re: Property at 0/1 14 Muirpark Street, Glasgow, G11 5NP ("the Property")

Parties:

Miss Amy Brown, 0/1 14 Muirpark Street, Glasgow, G11 5NP ("the Applicant")

Mrs Zoe Fance, 34 Cairn Crescent, Ayr, KA7 4PW ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member)

Decision

Decision (in absence of the Respondent)

At the Case Management Discussion ("CMD") which took place by telephone conference on 9 September 2024 both parties were in attendance.

Prior to the CMD the Tribunal had received from the Respondent an email dated 20 August 2024 with attachments and from the Applicant emails dated 28 and 30 August 2024 with attachments.

Background

The Tribunal noted the following background:-

- The Respondent leased the Property to the Applicant in terms of a Private Residential Tenancy Agreement ("the PRT") that commenced on 3 December 2021.
- The deposit payable in terms of the PRT was agreed to be £750.
- On 2 and 3 December 2021 the Applicant paid by bank transfer to the Respondent sums of £100 and £1066.67 respectively, being the deposit together with rent for the period 3 to 27 December 2021.
- On 15 April 2024 the Respondent lodged the deposit in a tenancy deposit scheme.

The above background was not in dispute.

This application is made under Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Regulations").

The Case Management Discussion

In addition to the application and the written representations of the parties, the Tribunal had regard to the following oral submissions from the Applicant and the Respondent:-

From the Applicant

- i. The Applicant is still in occupation of the Property.
- ii. It was only when the Applicant was served with a Notice to Leave by the Respondent on or around 5 March 2024 that the Applicant could not find any deposit information and contacted the Respondent to enquire as to the position.
- iii. On investigation the Applicant became aware that the deposit had not been appropriately lodged into an approved scheme.
- iv. The Applicant accepted the deposit was eventually lodged into an approved scheme on 15 April 2024.
- v. The Applicant emphasised the stress she was put under by virtue of the situation. She suggested that that the Respondent had said she would get her deposit back more quickly if she vacated the Property and was concerned the Respondent might not have the money to pay her back.
- vi. The Applicant felt the Respondent blamed her for not noticing the deposit had not been lodged as ought to have been the case.

From the Respondent

- i. The Respondent accepted that as a matter of law the deposit ought to have been lodged in an approved tenancy deposit scheme within 30 working days of the PRT commencing.
- ii. The Respondent said she had a good and supportive relationship with the Applicant until the Notice to Leave was served.
- iii. The Respondent said that having served the Notice to Leave she had said to the Applicant that the deposit could have been returned to her to avoid the paperwork associated with lodging the monies into an approved scheme.
- iv. The Respondent said she wanted to do things with the consent of the Applicant but realised she should have lodged the deposit as legally required.
- v. At the time of entering into the PRT the Respondent's child had been born 7 weeks prematurely and her husband showed the Applicant around the Property and took the deposit but she accepted the lodging of the deposit remained her responsibility.
- vi. The deposit had never been discussed during the period of the PRT until service of the Notice to Leave.
- vii. The Respondent rents out one other property as well as the Property.
- viii. The Property has been rented out on a commercial basis for around 20 years.
- ix. The other property has been rented out on a commercial basis for around 10 years.
- x. The deposit was paid into a Bank of Scotland Current account for the Property. The balance in the account was never positive or the Respondent might have realised her omission to lodge the deposit. Instead the account balance went up and down as rent was paid in, mortgage payments paid out and repairs costs incurred.
- xi. The Respondent apologised again for her oversight.

Findings in Fact

- i. The Respondent leased the Property to the Applicant in terms of the PRT that commenced on 3 December 2021.
- ii. The deposit payable in terms of the PRT was agreed to be £750.

- iii. On 2 and 3 December 2021 the Applicant paid by bank transfer to the Respondent sums of £100 and £1066.67 respectively, being the deposit together with rent for the period 3 to 27 December 2021.
- iv. The deposit was not timeously lodged in an approved scheme in terms of the Regulations.
- v. The Applicant is still in occupation of the Property.
- vi. It was only when the Applicant was served with a Notice to Leave by the Respondent on or around 5 March 2024 that the Applicant could not find any deposit information and contacted the Respondent to enquire as to the position.
- vii. The Respondent rents out one other property as well as the Property.
- viii. The Property has been rented out on a commercial basis for around 20 years.
- ix. The other property has been rented out on a commercial basis for around 10 years.
- x. The deposit was paid into a Bank of Scotland Current account for the Property.
- xi. On 15 April 2024 the Respondent lodged the deposit in a tenancy deposit scheme.

Reasons for Decision

The factual background to the application was not in dispute between the parties and was accepted by the Tribunal.

The Tribunal takes a landlord's failure to comply with the Regulations very seriously.

Regulation 3 of the Regulations states:-

*"(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;"*

Regulation 10 of the Regulations states:-

"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;"

The Respondent is the heritable proprietor of the Property and the landlord under the PRT.

The PRT is a relevant tenancy under the Regulations.

The deposit was not timeously lodged with the scheme administrator of an approved scheme in terms of Regulation 3. A sanction is therefore payable by the Respondent to the Applicant in terms of Regulation 10.

In determining the amount payable by the Respondent to the Applicant the Tribunal took into account the following:-

- i. That the deposit was unprotected for a period in excess of 2 years.
- ii. That the Respondent is and has been for many years a commercial landlord.
- iii. The Respondent was aware of the Regulations and the obligations arising in terms of them, but failed to comply with them.

- iv. That the Respondent lodged the deposit in full with an approved scheme on 15 April 2024.
- v. The deposit is not at risk and the Applicant has the opportunity to claim on the deposit and participate in the adjudication process carried out by the scheme administrator in due course if she wishes to do so.
- vi. The Applicant has ultimately suffered no prejudice as a result of the failure to lodge the deposit timeously.

The Tribunal did not take into account the apparent stress caused to the Applicant. The purpose of the Regulations is not to assess and compensate a tenant for a landlord's failure to lodge a deposit into an approved scheme.

The Tribunal did not take into account the circumstances surrounding the Respondent serving a Notice to Leave on the Applicant and the Respondent's financial circumstances which are not relevant to these proceedings.

In all the circumstances the Tribunal considered the Respondent's failure to pay the deposit into an approved scheme to be towards the most serious end of the scale of sanctions available to it having particular regard to her being a longstanding commercial landlord.

The Tribunal therefore determined that, having regard to the foregoing, the Respondent must pay to the Applicant a sum of £1500 by way of a penalty for the failure to comply with the Regulations, being two times the deposit. Such a penalty is proportionate, fair and just in the circumstances.

Decision

The Respondent is ordered to pay to the Applicant a sum of £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.

Gillian Buchanan

Legal Member/Chair

9 September 2024
Date