



**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/24/1377

Re: Property at 7 Berryhill Avenue, Girdle Toll, Irvine, KA11 1QP ("the Property")

Parties:

Ms Ruth Melvin, 2 Byres Loch, Kilwinning, KA13 6JS ("the Applicant")

EDB Aviation Services, 11 Overdale Crescent, Prestwich, Ayrshire, KA9 2DD ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member)

Decision (in absence of the Respondent)

At the Case Management Discussion ("CMD") which took place by telephone conference on 22 August 2024 the Applicant was not in attendance but was represented by Mrs Andrea Gibson of CHAP, Ardrossan. The Respondent was represented by Mr Edwin Boyce.

Prior to the CMD the Tribunal had received from the Respondent emails dated 30 July and 5 August 2024 with attachments.

Background

The Tribunal noted the following background:-

- i. The Respondent is in right of the landlord's interest in the lease of the Property to the Applicant constituted in terms of a Private Residential Tenancy Agreement ("the PRT") that commenced on 3 January 2022.
- ii. The rent payable in terms of the PRT was agreed to be £380 per month.
- iii. The deposit payable in terms of the PRT was agreed to be £380.
- iv. On 29 December 2021 the Applicant paid by bank transfer a sum of £760, being the deposit together with the first months rent.
- v. The Applicant vacated the Property on 12 February 2024.
- vi. On 21 March 2024 the Respondent lodged the deposit in a tenancy deposit scheme, namely Safe Deposit Scotland.

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 Mrs Gibson for the Applicant and Mr Boyce for the Respondent:-

From Mrs Gibson

- i. Notwithstanding the terms of the PRT, Mrs Gibson did not believe a written receipt was issued for the deposit paid by the Applicant.
- ii. The Applicant vacated the Property on 12 February 2024.
- iii. The Applicant assumed the Respondent was registered as a landlord. She also assumed the deposit had been lodged in an approved scheme as required.
- iv. It was only when leaving the Property that the Applicant became aware that the deposit had not been appropriately lodged.
- v. The Applicant first consulted Mrs Gibson on 14 February 2024. She said she had not had her deposit returned. Mrs Gibson investigated the position and made enquiries of the three tenancy deposit schemes. The deposit had not been lodged in any of them.
- vi. Mrs Gibson contacted Mr Boyce by telephone on 20 March 2024. During her telephone conversation with Mr Boyce he admitted not being registered as a landlord and said that he had been doing the Applicant favour.
- vii. Mr Boyce lodged the deposit the next day with Safe Deposit Scotland.
- viii. The Applicant understood Mr Boyce had other tenancies in the Glasgow area.
- ix. The Applicant did not participate in the subsequent adjudication by Safe Deposit Scotland following a claim by the Respondent that the deposit should be returned. Mrs Gibson explained that the Applicant works full-time and had been overwhelmed by the situation.

The Applicant seeks a penalty be imposed on the Respondent in terms of the Regulations.

From Mr Boyce for the Respondent

- i. Mr Boyce accepted that a receipt had not been issued for the deposit. He thought that signing the PRT was sufficient acknowledgement after the money had been paid.
- ii. The son of Mr Boyce owned the Property before he bought it from him.
- iii. At that time Mr Boyce lived abroad and purchased the Property as a "bolt hole" to live in when he came home.
- iv. The Property was purchased in the name of Mr Boyce's wife, Helen Boyce.
- v. During Covid the Property lay empty.
- vi. Before the Applicant took occupation of the Property Mr Boyce had been home for a period and had decorated and furnished the Property.
- vii. The Property is located within walking distance from his mum and dad and his other son.
- viii. The Property had never previously been let out.
- ix. Mr Boyce previously had one flat in Glasgow which he has now sold. He rented that property on and off over a period of approximately 10 years. The property was sold around two years ago.
- x. Mr Boyce let his registration as a landlord lapse after the property in Glasgow had been sold. His wife attempted to apply to be registered as a landlord. That was not

successful. Mr Boyce tried to apply under his old the landlord registration number and that was successful. He was therefore registered as a landlord again with effect from 21 March 2024.

- xi. When Mr Boyce rented the property in Glasgow he did so through a letting agency. They dealt with everything on his behalf and he was not aware of there being a legal requirement to lodge deposits in a scheme in every situation.
- xii. After he was made aware of the requirement to lodge the deposit in an approved scheme he immediately took steps to do so.
- xiii. The Property was transferred from Mrs Boyce to the Respondent in around February or March 2024. Mr Boyce is the sole director of the Respondent.
- xiv. Following the lodging of the deposit in March 2024, the Respondent made a claim on the deposit which he received back in full. The Applicant did not participate in the adjudication process.
- xv. Mr Boyce accepted the deposit was unprotected for the entire duration of the tenancy being a period of just in excess of 2 years.
- xvi. Mr Boyce said that he didn't want to be a landlord had been doing the Applicant a favour. He thought she would only be living in the Property for a period of one of two months maximum.
- xvii. Mr Boyce stated he was naive and angry with himself of putting himself in the position that he now finds himself.

Findings in Fact

- i. The Respondent is in right of the landlord's interest in the lease of the Property to the Applicant constituted by the PRT that commenced on 3 January 2022.
- ii. The rent payable in terms of the PRT was agreed to be £380 per month.
- iii. The deposit payable in terms of the PRT was agreed to be £380.
- iv. On 29 December 2021 the Applicant paid by bank transfer a sum of £760, being the deposit together with the first months rent.
- v. Notwithstanding the terms of the PRT no receipt for the deposit was issued.
- vi. The Applicant vacated the Property on 12 February 2024.
- vii. On 21 March 2024 the Respondent lodged the deposit in a tenancy deposit scheme, namely Safe Deposit Scotland.
- viii. The Applicant did not participate in the subsequent adjudication by Safe Deposit Scotland following a claim by the Respondent that the deposit should be returned.
- ix. The deposit was unprotected for the entire duration of the PRT being a period of just over 2 years.
- x. Whilst Mr Boyce was previously the landlord of a property in Glasgow he employed the services of a Letting Agent and was not aware that the lodging of a deposit into an approved scheme was a mandatory legal requirement.
- xi. That Mr Boyce ought to have been aware of the Regulations and the obligations arising in terms of them.

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 is in right of the landlord's interest under the PRT. Mr Boyce is the sole director of the Respondent.

When the PRT was entered into Mrs Helen Boyce was the heritable proprietor of the Property.

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 the entire duration of the PRT being a period of just over 2 years.
- ii. That whilst Mr Boyce was previously the landlord of a property in Glasgow he employed the services of a Letting Agent and was not aware that the lodging of a deposit into an approved scheme was a mandatory legal requirement.
- iii. That Mr Boyce ought to have been aware of the Regulations and the obligations arising in terms of them.
- iv. That Mr Boyce for the Respondent lodged the deposit in full with an approved scheme on 21 March 2024, the day after he had been made aware of the requirements of the Regulations by Mrs Gibson.
- v. That the Applicant had the opportunity to claim on the deposit and participate in the adjudication process carried out by Safe Deposit Scotland following the Respondent's claim. She failed to do so.
- vi. The Applicant ultimately suffered no prejudice as a result of the failure to lodge the deposit timeously.

The Tribunal therefore determined that, having regard to the foregoing, the Respondent must pay to the Applicant a sum of £570 by way of a penalty for the failure to comply with the Regulations, being 1½ 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 £570.

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

22 August 2024
Date