



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations

Chamber Ref: FTS/HPC/PR/24/1918

Re: Property at 0/2 64 Clifford St, Glasgow, G51 1PB (“the Property”)

Parties:

Mr Michael Humphries, c/o 3 Auchinleck Gardens, Glasgow G33 1PL (“the Applicant”)

Mr Hashir Raihan, 83 Drumcross Road, Glasgow, G53 5LL (“the Respondent”)

Tribunal Members:

Mary-Claire Kelly (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for payment in the sum of £180.

Background

1. By application dated 25 April 2024 the applicant sought an award under the Tenancy Deposit Schemes (Scotland) Regulations. The applicant lodged with the application various documents including:
Correspondence with 3 tenancy deposit schemes
Screenshot of bank account dated 30 January 2024

Case Management Discussion- teleconference – 2 September 2024

1. The applicant represented himself at the cmd. The respondent was neither present nor represented. The Tribunal noted that service on the respondent had been by Sheriff Officers. The Tribunal proceeded with the cmd in the

absence of the respondent in terms of Rule 29 as it was satisfied that Rule 24(1) had been complied with.

2. The applicant stated that the tenancy had commenced on 31 January 2024. On that date he had met a representative of the respondent called Paul. The applicant stated that he had requested a copy of the lease agreement but he was not provided with one and was told that the respondent would not be back until later that evening to provide a lease document. The applicant explained that he paid a total of £650 to Paul in cash comprising one months rent in advance of £450, £100 for a deposit and £100 to cover utility bills per month. . The applicant explained that he had found the property on Next Door, a property letting website/app. The applicant stated that the property was shared with 3 other occupants. As far as he was aware the respondent owned other rental properties in the Govan area. He stated that the room which had been rented to him was in a poor condition. The room was not clean, with cardboard under the furniture. It was also in a poor state of repair with exposed beams and insulation. The applicant felt unable to continue to reside in the property and gave the landlord notice that he would be moving out on 5 February 2024. The applicant returned his keys on 16 February 2024 and asked for the return of his deposit.
3. The respondent failed to return his deposit .The applicant subsequently contacted the tenancy deposit schemes and was advised that his deposit had not been lodged in a suitable scheme.
4. The applicant advised that he had been studying in Glasgow when he had entered into the tenancy. He was on a low income and had noticed that the loss of the deposit had an impact on his monthly finances and ability to budget for necessities immediately afterwards.

Findings in fact

5. Parties entered into a tenancy agreement with a commencement date of 31 January 2024.
6. A deposit of £100 was paid to the respondent at the commencement of the tenancy.
7. The tenancy terminated on 15 February 2024.

8. The respondent failed to return the deposit to the applicant at the end of the tenancy period.
9. The respondent had failed to lodge the deposit in a tenancy deposit scheme as required in terms of regulation 3 of the [Tenancy Deposit Schemes \(Scotland\) Regulations 2011/176](#) for a period of 15 days from the commencement of the tenancy.

Reasons for Decision

10. The Tribunal took into account the applicant's written and oral submission and the various documents lodged with the application.
11. The Tribunal was satisfied that notwithstanding the absence of a written tenancy agreement a tenancy agreement to which the regulations applied had been created. The Tribunal was also satisfied that the present action was raised within three months of the termination of the tenancy. Accordingly, regulation 10 applied.
12. The Tribunal was satisfied that the respondent had failed to place the deposit in a suitable tenancy deposit scheme for a period of 15 days.
13. In assessing the appropriate amount of sanction under Regulation 10(a) of the regulations the Tribunal took the following factors in account.
14. In this case the applicant's deposit had been unprotected for a period of 15 days. This was a relatively short period. The Tribunal considered the respondent's refusal to repay the deposit at the end of the tenancy to be an aggravating factor.
15. The Tribunal also took into account the applicant's evidence that he had been impacted by the failure to return the £100 deposit. The Tribunal found the applicant to be credible and believable in his evidence and had no reason to disbelieve his evidence on this point.
16. However the Tribunal took into account and gave weight to the fact that that the amount of the deposit was low at £100.
17. The Tribunal took into account the respondent's failure to attend the cmd without explanation or to put forward any further submissions in respect of the matter or setting out their position on an appropriate level of sanction.
18. The legal test to be applied in determining the level of sanction is set out in *Jenson v Fappiano* 2015 G.W.D. 04-89 and subsequent case law. Those

authorities are reviewed by Sheriff Cruickshank in Ahmed v 3 Russell 2023 S.L.T. (Tr) 33 and confirm the Tribunal should seek to assess a sanction that is “fair and proportionate” in all the circumstances, taking into account both aggravating and mitigating circumstances.

19. Having regard to the foregoing factors and the weight attached to each of them, and that the maximum sanction is £300 (three times the amount of the deposit) the Tribunal assesses a fair and proportionate sanction in the sum of £180.

Decision

20. **The appellant is ordered to pay the respondents the sum of £180 in terms of regulation 10(a) of the Tenancy Deposit Schemes (Scotland) Regulations 2011.**

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.

M-C Kelly

Legal Member/Chair

2 September 2024
Date