



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/24/0721

Re: 66 Victoria Road, Kirkcaldy, Fife KY1 1DQ (“the Property”)

Parties:

Kate Mufema, 33 Overton Road, Kirkcaldy, Fife K1 2DX (“Applicant”)

Frontline Fife, 57-59 Viewforth Street, Kirkcaldy, fife KY1 3DJ (“Applicant’s Representative”)

Wayne Shanley, 1 Barry Road, Kirkcaldy, Fife KY2 6HY (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Decision :

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent should pay to the Applicant the sum of £1500 .

Background and Documents Lodged

1. The Applicant made an application in Form G ("Application") dated and lodged on 12 February 2024 under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("Rules") stating that the Respondent had failed to timeously lodge a tenancy deposit in an appropriate scheme in breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("2011 Regulations"). The documents produced to the Tribunal by the Applicant were:

- A private residential tenancy agreement (“PRT”) between the Applicant and the Respondent which commenced on 18 January 2023.
- Copy bank statement showing a payment from the Applicant to the Respondent of £1200 on 29 January 2023.

- Screenshots of websites for MyDeposits Scotland, Safe Deposit Scotland and Letting Protection Scotland which indicated they did not hold the Applicant's deposit for the Property.
2. A copy of the Application and notification of a Case Management Discussion fixed for 26 June 2024 was given to the Respondent by Sheriff Officer on 22 May 2024.

Case Management Discussion ("CMD")

3. A CMD took place on 26 June 2024 by conference call. The Applicant was not in attendance but was represented by Iona Watson of the Applicant's Representative. The Respondent was in attendance. The Tribunal explained the terms of regulation 10 of the 2011 Regulations.
4. The Tribunal noted that the Applicant had paid a deposit of £600 to the Respondent on or about 29 January 2023. Mr Shanley confirmed that was correct. The Tribunal asked how the tenancy came to an end. Ms Watson said that the Applicant emailed the Respondent in October 2023 to say that she would be leaving the Property. She said that the Applicant moved out on 9 December 2023. She said she did not think formal notice was served. Mr Shanley said that one set of keys was returned to him on 9 / 10 December but the remaining sets were not returned until 20 December 2023.
5. The Tribunal asked Mr Shanley why the deposit was not lodged in an approved scheme. He said that his daughter was born the weekend that the Applicant moved into the Property. He said that lodging the deposit slipped his mind. In response to questions from the Tribunal Mr Shanley said that he is employed as an HGV driver and that he owns two flats in Kirkcaldy which he rents to tenants. He said the Applicant was the second tenant in the Property. He said the first tenant occupied for 12 years. He said the deposit for the first tenant was in a scheme with Barclays. The Tribunal explained that Barclays is not an approved scheme. Mr Shanley said that he used to keep deposits in his business bank account. On further questioning Mr Shanley said that he held a deposit for both of his rental properties and had only lodged them in an approved scheme the previous week. He said the deposits were lodged with Safe Deposits Scotland. He said that his second rental property has been let to the same tenant since just before the covid pandemic.
6. The Tribunal asked Mr Shanley if there were any mitigating factors he wished the Tribunal to take into account. He said that he had been aware of the need to lodge deposits in a scheme but had been unaware of the importance of doing so.

7. The Tribunal noted that the following was agreed : the tenancy commenced on 18 January 2023 and ended between 9 and 20 December 2023; the Applicant paid a deposit of £600 to the Respondent on or about 29 January 2023; the deposit was not returned to the Applicant at the end of the tenancy and the deposit was not placed in an approved scheme.
8. The Tribunal expressed the view that it had sufficient information to proceed to make a decision without the need for a further Hearing. The Parties stated that they were content for the Tribunal to make a decision on the basis of the information presented.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a tenancy agreement which commenced on 18 January 2023.
2. The tenancy came to an end between 9 and 20 December 2023.
3. The Applicant paid to the Respondent a deposit of £600 on or about 29 January 2023.
4. The deposit was not paid to the administrator of an approved scheme in compliance with the 2011 Regulations.
5. The Respondent had let the Property on one occasion before entering into the tenancy agreement with the Applicant. The tenant under the previous tenancy had paid a deposit which the Respondent did not lodge in an approved scheme.
6. The Respondent owns a second rental property which has been let to the same tenant for some time. The deposit associated with that tenancy was not lodged with an approved scheme until June 2024.
7. The Applicant was unable to utilise the dispute resolution procedure offered by approved tenancy deposit schemes in order to seek return of the deposit.

Findings in Fact and Law

8. The Respondent breached Regulation 3 of the 2011 Regulations.

Relevant Legislation

9. Regulation 3 of the 2011 Regulations provides *inter alia* :

"(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; and

(b) provide the Tenant with the information required under Regulation 42.....

10. Regulation 9 of the 2011 Regulations provides:

"(i) A Tenant who has paid a tenancy deposit may apply to the First Tier Tribunal for an order under Regulation 10 where the Landlord did not comply with any duty in Regulation 3 in respect of that tenancy deposit.

(ii) An Application under paragraph 1 must be made no later than three months after the tenancy has ended."

11. Regulation 10 of the 2011 Regulations provides *inter alia* :

"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"

Reasons for the Decision

12. Regulation 10 of the 2011 Regulations states that if satisfied that the landlord did not comply with the duty in Regulation 3 to pay a deposit to the scheme administrator of an approved scheme within 30 working days of the beginning of the tenancy, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. It was a matter of admission that the Respondent did not lodge the deposit with an approved scheme.

13. The amount to be awarded is a matter for the discretion of the Tribunal having regard the factual matrix of the case before it. The Tribunal considered the comments of Sheriff Ross in *Rollett v Mackie* UTS/AP/19/0020. At para 13 and 14 he considered the assessment of the level of penalty and said:

"[13] In assessing the level of a penalty charge, the question is one of culpability, and the level of penalty requires to reflect the level of culpability. Examining the FtT's discussion of the facts, the first two features (purpose of

Regulations; deprivation of protection) are present in every such case. The question is one of degree, and these two points cannot help on that question. The admission of failure tends to lessen fault: a denial would increase culpability. The diagnosis of cancer also tends to lessen culpability, as it affects intention. the finding that the breach was not intentional is therefore rational on the facts, and tends to lessen culpability.

[14] Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals. None of these aggravating factors is present."

14. Mr Shanley admitted his failure to comply with the 2011 Regulations. He said that he failed to lodge the deposit in an approved scheme as it slipped his mind. On further discussion however it was apparent that Mr Shanley had failed to lodge deposits in an approved scheme for the two rental properties owned by him until June 2024. He was aware of the need to lodge a deposit in a scheme but did not appreciate the importance of doing so. Ignorance of the law is not an excuse for non-compliance.
15. Whilst the admission of failure lessens fault, the Tribunal considered that there were aggravating factors in this case. Firstly, as the deposit was not lodged in an approved scheme the Applicant was deprived of the opportunity to approach the scheme administrator regarding return of the deposit. In these circumstances the purpose of the 2011 Regulations was defeated. This also meant that the Applicant required to apply to the Tribunal to seek recovery of the deposit. Secondly, the Respondent had breached the 2011 Regulations in respect of the first tenant in the Property and in respect of his second rental property. In light of these aggravating factors the Tribunal considered that it would be appropriate to make an award of compensation at the higher end of the scale. The Tribunal determined that the sanction should be £1,500 in the particular facts and circumstances of this case.

Decision

The Tribunal granted an Order for payment of £1,500 in terms of Regulation 10(a) of the 2011 Regulations.

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.

**Joan Devine
Legal Member**

Date: 26 June 2024