



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

Chamber Ref: FTS/HPC/CV/24/2009

Re: Property at 0/1 , 5 Cowan Street, Glasgow, G12 8PF (“the Property”)

Parties:

Mr Danial Boules, Argus Ross, 2/1 49 Oakfield Avenue, Glasgow, G12 8LL; 0/1 , 5 Cowan Street, Glasgow, G12 8PF (“the Applicant”)

Mr Sajid Quayam, Memuna Chaudhry, 9 Wellfield Avenue, Giffnock, Glasgow (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order in the sum of Two hundred pounds (£200) Sterling

Background

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- 1 The Applicants applied to the Tribunal under Rule 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations) seeking an order for payment as a result of the Respondents’ failure to lodge their deposit in an approved tenancy deposit scheme. In support of the application the Applicant provided screenshots of Whatsapp messages, a copy of the tenancy agreement between the parties and correspondence from SafeDeposits Scotland.
- 2 By Notice of Acceptance of Application a Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore

assigned and the application paperwork was served upon the Respondents by Sheriff Officers.

- 3 On 10 September 2024 the Tribunal received an email from the Respondents with written representations. In summary the Respondents advised that a deposit from a previous tenant in the sum of £400 had been held with SafeDeposits Scotland and they were under the impression that this would be transferred to the Respondents' tenancy. They were reminded of the remaining £600 payment by the Respondents on 22 March 2024 and transferred this to SafeDeposits Scotland on 2nd April 2024. This had then led to a discussion about the £400 held by SafeDeposits Scotland and the Respondents were told they could not transfer this payment. They therefore transferred £400 to the Respondents' deposit account on 1st May 2024. The Respondents pointed out that the Applicants had received their deposit back promptly after requesting this from the deposit scheme. The Respondents explained that it had been an honest mistake. They had experienced some personal difficulties over the past year, with a family member passing away which led to additional caring needs on their part. The Respondents had no savings from the flat income, so any payment order would be particularly difficult on them financially.
- 4 The Tribunal received further written representations from the Applicants on 18 September 2024. In summary the Applicants stated that they had to persist with the Respondents in order to get the deposit secured. The Applicants had reminded the Respondents of this on 22 March 2024 and the deposit was finally secured on 2 May 2024, over 10 months after it had been paid. The Applicants stated that whilst the Respondents had claimed that the deposit was returned promptly and the Applicants suffered no harm, this did not negate the failure to protect the deposit during the tenancy. The Applicants noted that this was a clear breach of the deposit protection laws and warranted compensation.
- 5 On 20 September 2024 the Respondent provided further written representations and provided correspondence from SafeDeposits Scotland confirming that the deposit was secured by 3 April 2024 however there were administrative issues that were not sorted out until 29 April 2024 when the deposit scheme confirmed the payment was secure. The Respondent reiterated that the Applicants had received their deposit back. The Respondents asked the Tribunal to consider the difficult personal circumstances at the time and the prompt action taken upon realizing the mistake.

The Case Management Discussion

- 6 The Case Management Discussion took place on 20 September 2024 by teleconference. The Applicants were represented by Mr Boules. The Respondents were represented by Mr Quayam.

- 7 The Tribunal explained the purpose of the Case Management Discussion and the legal test to be applied under Rule 10 of the 2011 Regulations, and asked the parties to address the Tribunal on their respective positions. For the avoidance of doubt the following is a summary of the submissions made at the Case Management Discussion and does not constitute a verbatim account of the proceedings.
- 8 Mr Boules confirmed that the parties had agreed a deposit of £1,000. He and Mr Ross had paid £500 each. However only £600 of the £1000 was being protected 8 months after the tenancy commenced. Mr Boules advised that he had perhaps been liberal with the word “pressurised”, having used this in his written representations as the reason why the deposit was eventually lodged. However he had to remind the Respondents. Had he not done so, the deposit would not have been protected. Mr Boules advised that he had no reason to believe that the Respondent’s account of events was untrue. He believed it was an honest mistake. However the remaining £400 was not protected until after the £600 was lodged with the scheme. SafeDeposits Scotland had interacted with the Respondents and eventually the whole sum was protected, but this was months after it was supposed to be and only because Mr Boules had reminded them. Mr Boules confirmed that he had received his share of the deposit back in full and he assumed the same had happened with Mr Ross.
- 9 Mr Quayam confirmed that the Respondents had held their hands up and accepted that the deposit had not been lodged with a scheme within 30 days of the tenancy commencing. However a payment of £400 had been left in the scheme from the previous tenancy and the Respondents this would be transferred to the Applicants’ account. Mr Quayam also accepted that there was a further £600 that had been not lodged with the scheme and he referred to his family’s circumstances at the time in mitigation. His brother in law had suffered from cancer and had passed away. It had been a very stressful time and this had led to a mistake being made. It was a genuine mistake.
- 10 Mr Quayam confirmed that as soon as he received the message from Mr Boules reminding him about the deposit he took immediate steps to resolve matters. Mr Quayam explained that there had been emails and conversations with SafeDeposits Scotland over a period of time as outlined in his written representations. On 2 April 2024 he had gotten in touch with SafeDeposits Scotland to change the names on the account. On 3 April 2024 SafeDeposits Scotland confirmed that the full £1000 was secured. Mr Quayam understood that everything had been finalised at that point. However SafeDeposits Scotland subsequently emailed him on 18 April 2024 seeking clarification regarding the deposit. There were then a number of conversations between Mr Quayam and the tenancy deposit scheme. They had gone back and forward due to the confusion regarding the payments. On 29 April 2024

SafeDeposits Scotland confirmed that the full £1000 was now held in the correct account and was fully protected.

- 11 Mr Quayam apologised again for the mistake. He advised that it was not something that he made a habit of. When the next tenants moved in on 1 June 2024 their deposit was lodged within 2 to 3 days. It had been an honest mistake. Mr Quayam explained that he could have simply not completed the process in terms of lodging the deposit with the scheme when he received notice to leave from Mr Boules on 16th April 2024. However he wanted to ensure that the correct system was used. Mr Quayam explained that there had been no issue with the Applicant receiving their deposit back. It had been returned promptly and in full. Mr Quayam advised that there was never any intention not to secure the deposit. The Respondents had acted in good faith and had taken corrective action as soon as reasonably practicable. Mr Quayam confirmed that the Respondents let out a couple of other properties and had never found themselves in this scenario before.
- 12 Mr Boules was given an opportunity to make any further comment. He advised that he was willing to believe that there was a miscommunication with SafeDeposits Scotland. He did not believe that the Respondents were deliberately trying to evade their duties and they had been prompt in dealing with the return of the deposit. However that did not negate the fact that the law was explicit and requires the deposit to be protected within 30 days, which was not done. The full amount was not protected when it was supposed to be protected.
- 13 Mr Quayam was given an opportunity to make any final comments. He explained that he understood there had been a breach. He did try and be fair with his tenants and had acted in good faith. He was fully under the impression following his discussion with SafeDeposits Scotland that there was a deposit registered for the property and therefore that the deposit was protected. Mr Quayam noted that the Applicants had not suffered any detriment, it was purely a technical matter. The Respondents were struggling with the stress of the situation, particularly following the death of a family member, and it had been extraordinarily difficult for them. Mr Quayam urged the Tribunal to award the minimum amount, whatever that may be.
- 14 Mr Boules confirmed that he had no further submissions to make. Accordingly the Case Management Discussion concluded and the Legal Member advised parties that the decision would be issued in writing in due course.

Relevant Law

- 15 The relevant law is contained with the Housing (Scotland) Act 2006 and the Tenancy Deposit Scheme (Scotland) Regulations 2011. Section 120 of the 2006 Act provides as follows:-

“120 Tenancy deposits: preliminary

(1) A tenancy deposit is a sum of money held as security for—

(a) the performance of any of the occupant's obligations arising under or in connection with a tenancy or an occupancy arrangement, or

(b) the discharge of any of the occupant's liabilities which so arise.

(2) A tenancy deposit scheme is a scheme for safeguarding tenancy deposits paid in connection with the occupation of any living accommodation.”

16 The 2011 Regulations provide as follows:-

“3.—(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.

(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.

(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—

(a) in respect of which the landlord is a relevant person; and

(b) by virtue of which a house is occupied by an unconnected person,

unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.

(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.”

“9.—(1) 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.

(2) An application under paragraph (1) must be made by summary application and must be made no later than 3 months after the tenancy has ended.”

“10. 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; and

(b) may, as the First-tier Tribunal considers appropriate in the circumstances of the application, order the landlord to—

(i) pay the tenancy deposit to an approved scheme; or

(ii) provide the tenant with the information required under regulation 42.”

Findings in Fact

- 17 The Applicants entered into a tenancy agreement with the Respondents which commenced on 10 July 2023.
- 18 In terms of Clause 11 of the said tenancy agreement the Applicants undertook to pay a tenancy deposit in the sum of £1000. The Respondents undertook to lodge said deposit with SafeDeposits Scotland within thirty working days of the commencement of the tenancy.
- 19 The Applicants paid the tenancy deposit of £1000 to the Respondents prior to the commencement of the tenancy.
- 20 A payment of £400 was held by SafeDeposits Scotland from a previous tenant of the property. The Respondents believed this would be transferred to the Applicants' tenancy.
- 21 The Respondents did not pay the remaining £600 into an approved deposit scheme within the statutory timescale. The Respondents did not provide the required information regarding the deposit to the Applicants within the statutory timescale.
- 22 On 22 March 2024 the Applicants contacted the Respondents via text message querying the status of the tenancy deposit.
- 23 The Respondents subsequently paid £600 to SafeDeposits Scotland. On 3 April 2024 SafeDeposits Scotland advised the Respondents that the full deposit was protected.
- 24 On 18 April 2024 SafeDeposits Scotland contacted the Respondents with a query regarding the deposit further to a conversation between SafeDeposits Scotland and the Applicants. Following a discussion between the Respondents and SafeDeposits Scotland, the latter undertook further investigation into the matter. On 26 April 2024 SafeDeposits Scotland contacted the Respondents to advise that there were three accounts held for the tenancy address and requesting further information from the Respondents to enable the matter to be resolved.
- 25 On 29 April 2024 SafeDeposits Scotland advised the Respondents that the deposit of £1000 was protected in the Applicants' account.
- 26 The Applicants both received their share of the deposit back in full within a reasonable timescale. The Respondents confirmed agreement to the release of the payments timeously.

- 27 The Respondents are aware of their obligations under the 2011 Regulations, and in particular the duty to lodge a tenant's deposit with an approved tenancy deposit scheme. The failure to lodge the Applicants' deposit in full within the statutory timescale was an honest mistake.
- 28 During the period of time when the Applicants' deposit was unsecured, the Respondents were experiencing personal difficulties, including the death of a family member, and were under particular stress.
- 29 The Respondents own other properties which they let out.

Reasons for Decision

- 30 The Tribunal determined the application having regard to the application paperwork, the written representations and the verbal submissions from parties at the Case Management Discussion. The Tribunal was satisfied that it had sufficient information to make a determination of the application following the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties. It appeared that the substantive facts of the matter were agreed and the primary issue for the Tribunal to determine was the level of sanction to be applied as a result of the landlord's breach of the 2011 Regulations.
- 31 The 2011 Regulations specify clear duties which are incumbent on landlords in relation to tenancy deposits. Regulation 3 requires a landlord to pay any deposit received in relation to a relevant tenancy to an approved tenancy deposit scheme within thirty working days of the beginning of the tenancy. The deposit must then be held by the scheme until it can be repaid in accordance with the requirements of the Regulations following the end of the tenancy.
- 32 It was a matter of agreement between the parties that the tenancy had commenced on 10 July 2023, that the Applicants had paid a deposit of £1000 prior to the commencement of the tenancy and that the Respondents had not ensured that the deposit was paid into an approved tenancy deposit scheme. The Respondents had also failed to provide the prescribed information to the Applicants regarding the scheme in which their deposit had been placed. The Respondents were therefore in breach of Regulation 3, which was accepted in the verbal submissions by Mr Quayam at the Case Management Discussion.
- 33 Regulation 10 states that in the event of a failure to comply, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. Accordingly having been satisfied that the Respondent had failed to comply, the Tribunal then had to consider what sanction to impose having regard to the particular facts and circumstances of the case. The application of the sanction must seek to act as a penalty to

landlords and ensure compliance with their statutory duties in relation to tenancy deposits.

- 34 The Tribunal had regard to the decision of Sheriff Cruickshank in *Ahmed v Russell (UTS/AP/22/0021)* which provides helpful guidance on the assessment of an appropriate sanction. In doing so the Tribunal must identify the relevant factors, both aggravating and mitigating, and apply weight to same in reaching its decision. The Tribunal is then entitled to assess a fair and proportionate sanction to be anywhere between £1 and three times the sum of the deposit, which in this case is £1000. As per Sheriff Cruickshank at paragraph 40 of his decision in *Ahmed*:

“The sanction which is imposed is to mark the gravity of the breach which has occurred. The purpose of the sanction is not to compensate the tenant. The level of sanction should reflect the level of overall culpability in each case measured against the nature and extent of the breach of the 2011 Regulations.”

- 35 The Tribunal accepted that the deposit had not been protected for the majority of the tenancy term, and agreed with the Applicants that the landlord’s duty to secure tenancy deposits was a fundamental obligation. These were both aggravating factors which the Tribunal took into account.

- 36 However, the Tribunal did not believe there was any intention on the Respondents’ part to evade their responsibilities under the 2011 Regulations. The Tribunal found it believable that the Respondents would have believed at the start of the tenancy that the £400 held by the deposit scheme from the previous tenancy could be applied to the Applicants’ tenancy.

- 37 The Tribunal also took into account that, upon being made aware of the error in failing to lodge the remainder of the deposit on 22 March 2024, the Respondents had taken prompt action. They had been advised by the deposit scheme on 3 April 2024 that a deposit of £1000 was protected. What followed was clearly an administrative exercise whereby the scheme had to adjust the payments allocated to three accounts for the property in order to ensure the deposit was being held in the Applicants’ account. Mr Quayam had been upfront and apologetic about the error and the Tribunal found him credible. His account of events was reflected in the correspondence he had produced from the deposit scheme. The Applicants had ultimately received the deposit back in full at the end of the tenancy and would not have been prevented from making use of the deposit scheme adjudication process in the event of a dispute occurring. They had not therefore suffered any detriment as a result of the breach.

- 38 The Tribunal did not believe that this particular case reflected a pattern of neglect by the Respondents in terms of their duties under the 2011

Regulations. The Tribunal believed that it was a genuine error that had been brought about by the stress caused by the Respondents' family situation. The error had been rectified as soon as reasonably practicable after being brought to the Respondents' attention. The Tribunal found these all to be mitigating factors to which significant weight could be applied, and the Tribunal therefore concluded that this was not a case in which a significant sanction was required as the level of culpability was low.

- 39 Accordingly, taking into account the requirement to proceed in a manner that was fair, proportionate and just having regard to the seriousness of the breach, the Tribunal concluded that this was not a case where an award at the maximum end of the scale was merited. Accordingly the Tribunal made an order in the sum of £200.

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.

4 October 2024

Legal Member/Chair

Date