



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/23/2445

Re: Property at 8/2, Hutchison Crossway, Edinburgh, EH14 1RR (“the Property”)

Parties:

Mr Govind Suresh, Miss Elizabeth Mathew, Mrs Shaima Razak, Mr Robin Thomas Raju, 21/3, West Pilton Gardens, Edinburgh, EH4 4DT; 21/03, West Pilton Gardens, Edinburgh, EH4 4DT; 21/3, West Pilton Gardens, Edinburgh, EH4 4DT; 70 Kingston Avenue, Edinburgh, EH16 5SW (“the Applicant”)

Zhongquan Wang, Jennifer Wang, 38 Craigmillar Castle Road, Edinburgh, EH16 4AR; (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Second-Named Respondent, Jennifer Wang, for payment of the undernoted sum to the Applicant(s):

Sum of THREE THOUSAND TWO HUNDRED POUNDS (£3,200) STERLING

- Background
- 1. An application was submitted to the Tribunal under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. Said application sought an order be made against the Respondents on the basis that the Respondents had failed to comply with the duties to lodge a deposit in a tenancy deposit scheme within 30 days of the start of the tenancy in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”).

2. A separate application by the Applicants seeking a payment order against the Respondents under Rule 111 of the Rules and under case reference FTS/HPC/CV/23/2444 was heard at the same time.
 3. Lodged with the application were:
 - (i) Screen shots of WhatsApp Chat messages asking for the return of the deposit and confirming the end of the tenancy.
 - (ii) Copy invoices from Feel at Home Relocators
 4. In response to a request for clarification from the Tribunal, the Applicants advised there was no written tenancy agreement; that the registered landlord was Mr Zhongquan Wang and that he should be added to the application; that the tenancy started on 9th September 2022 and ended they were evicted on 20th May 2023; the rent was £1600 per month and the deposit was £3200.
 5. The papers were served by Sheriff Officer on 24 October on the first Respondent but had to be served by advertisement on the second Respondent Ms Jennifer Wang responded to this application and the conjoined application under FTS/HPC/ CV/23/2444 by e-mail dated 13 November 2023 advising that she would represent Mr Wang and herself and stating that Mr Wang does not speak English and that he does not have direct relationship in this application. She advised that she thought the main issue was the rent deposit dispute and advised that she had received many complaints about noise and mess at the Property from neighbours and the Council regarding the tenants' behaviour. She confirmed the tenants moved out on 20th May 2023 and after they moved out she found a lot of damage at the Property and found that substantial cleaning work was required. She also indicated an electricity bill of £1629.47 had not been paid or proof of this had not been shown to her. For these reasons she claimed money would be deducted from the deposit.
- Case Management Discussion
6. The Case Management Discussion ("CMD") took place by teleconference. The first named Applicant was present on the call and was representing the other applicants. The Second named Respondent was also present. The first named respondent had phoned in prior to 10am and spoken to the clerk to advise that he would not be phoning into the case management discussion. Ms Wang advised at the start of the call when that this is probably because his English is not good. Ms Wang advised that Mr Wang had asked her to represent him but there was no evidence of a written mandate and Ms Wang agreed she did not realise this was required. The Tribunal advised that if appropriate this would be required if Mr Wang wished Ms Wang to represent him going forward.
 7. Mr Thomas advised that he and his fellow applicants dealt with an Indian agency in trying to secure accommodation in Edinburgh and paid 2 deposits for this, the first was £400 each and the second £413 he advised that he believed both went to the landlord and in total therefore the deposit was £3,252 although he accepted that in his application he has referred to the deposit as £3,200 only. He advised that he dealt with and exchanged messages with Ms Wang the second named respondent and a Ms Selina Heron but had not realised who

they were. He and his fellow applicants had asked to get a tenancy agreement but were never sent one and he advised he did not know that Ms Wang was a tenant of Mr Zhongquan Wang but he did find out Mr Wang was the registered landlord after a member of Edinburgh City Council visited the Property. He confirmed that they paid rent to Selina every month but that it was Jennifer Wang who came to the house when necessary.

8. With regard to repayment of the deposit he advised that they (the tenants) kept chasing for the return of the deposit and he was told by Ms Wang and Ms Heron that there was a lot of cleaning needed and they offered some money but not all of it to be returned. Mr Thomas confirmed that tenancy ended on 20th May 2023 alleging that Ms Wang wanted to let it out to visitors coming to the fringe and not students for the summer.
9. Ms Wang then advised that she sub- let the Property from Mr Wang the first named Respondent who she said is the registered landlord and to whom she paid rent. She did however agree that she was the landlord with the tenants, she took the deposit and rent from them. She advised she took full responsibility and felt that as Mr Wang was the legal owner and registered landlord she could not register the deposit but kept it in a separate bank account. When asked if she was acting as an agent for the landlord she advised she was not she felt she was the landlord although since the Applicants moved out she advised she has given up her tenancy of the Property. When asked how much the deposit was Ms Wang advised that it was £1,600 the equivalent of one months' rent and denied that it was £3,252 as advised by the Applicants.
10. With regard to the reason for retaining the deposit she advised that significant cleaning had to be carried out after the tenants left and she referred to the whats app messages from Ms Heron which confirmed that adults and children had carried out the work on their behalf. She could not confirm their names or whether it was a business that carried out the work but advised she could provide proof of payment and if necessary names. She also clarified the cost was for 2 adults charging £20 per hour for 7.5 hours and 2 children charging 10 an hour for 5 hours each giving a total of £400, with additional costs for a cabinet and bed, replacement washing machine bought from facebook market place and cost of replacement laminate flooring. Giving a total cost due she claimed which was due to herself of £1,272 and she confirmed she was prepared to pay the tenants back the remaining £328.
11. Mr Thomas advised that he and his fellow applicants denied there was substantial cleaning to be done, that they had cleaned it to the best of their abilities and that the washing machine had been rusty at the start of the tenancy; the floor had been damaged and that he has not seen any invoices to support the cleaning costs.
12. The legal member advised both this and the conjoined case would require to proceed to a hearing where both parties could lodge any further documentation to support their position, and call witnesses.

13. From the oral submissions and written representations the parties have agreed that:-

- (i) The tenants had possession and were tenants of the Property from approximately September 2022
- (ii) The monthly rent was £1600.
- (iii) The tenancy ended on 20th May 2023

14. Issues to be Resolved:

- (i) Is the landlord solely the second named Respondent Ms Wang?
- (ii) Ms Wang agrees she was the sub landlord but disputes being liable to place the deposit into a deposit scheme.
- (iii) How much was paid as a deposit?
- (iv) If the deposit paid is for a relevant tenancy and has not been placed in a scheme what is a suitable penalty to be awarded?

- The Hearing

15. The Hearing took place in-person on 30 August 2024.

16. The First-Named Applicant, Mr Robin Thomas Raju, confirmed that he was appearing on behalf of all applicants. Appropriate mandates had been provided to the Tribunal. The Second-Named Respondent, Jennifer Wang, confirmed that she was appearing on behalf of both Respondents. An appropriate mandate from Mr Wang had been provided.

- Applicants' evidence

17. The Applicants sought an order from the Tribunal on the basis that the Respondents had failed to comply with their duties to lodge a deposit in a tenancy deposit scheme within 30 days of the start of the tenancy in terms of Regulation 3 of the 2011 Regulations.

18. The Applicant submitted that he had arrived in the UK as a student in October 2022, which was when he moved into the Property. The other joint tenants arrived in September 2022. The Applicants used an agency in India to help them source the Property and they did not know the legal rules relating to private tenancies in Scotland. The Indian agency connected them with Selina Heron who was working with the Second-Named Respondent, Jennifer Wang.

19. The Applicants paid two deposits, one which was retained by the Indian agency and the other which was passed to the Respondents. The Applicants were told that the deposit would be protected by the Respondents.

20. The Applicants had a call with the Second-Named Respondent and Selina Heron. During this call they were told about the Property. The first of the applicants to arrive in the property was Govind Suresh and he set up the utility

accounts. Selina Heron helped him set up the electricity account. Selina advised the Applicants that Jennifer Wang was a “caretaker” of the house and the Applicants believed that Selina Heron was the owner. The Applicants paid rent to Selina each month. They believed that she was the owner as this is what was written in the paperwork from the Indian agency.

21. It was submitted that after arrival in the property, the Applicants told the Respondents that they needed a tenancy agreement. The Applicants didn't know about tenancy deposit schemes but they had been told by the Indian agency that their deposit would be protected.
22. It was submitted that the Applicants chased Selina Heron for a tenancy agreement and had sent Ms Heron copies of their BRP cards. Jennifer Wang and Selina Heron had told the Applicants that they would come to the Property and get a tenancy agreement signed, but they did not show up. Thereafter it was submitted that the Applicants were told that they would need to leave the Property. The Applicants could not find another property and had to extend their stay until the 20 May 2023, when they moved out.
23. When the Applicants moved out of the Property, there was an electricity bill left to pay which was under the name of Mr Suresh and this has been paid off. It was submitted that the Applicants were struggling to get the money together to pay for their next flat. They went to the Citizens Advice Bureau for advice and were told that they should file an application with the tribunal in relation to the deposit not having been lodged in a tenancy deposit scheme. It was only upon contacting the Citizens Advice Bureau that the Applicants became aware of the rules regarding tenancy deposit schemes.
24. It was submitted that the Applicants asked the Respondent for return of their deposit, to be told by Ms Wang that they had damaged items within the Property. The Applicants' position was that this was normal wear and tear and that there was no significant damage to the Property. It was submitted that the Property was in the same condition at the end of the tenancy as it was at the start of the tenancy.
25. It was submitted that when they were told that there had been cleaning costs, the Applicants asked Ms Wang for a copy of the cleaning invoice, but this was not produced. The Applicants had been told that £1,000 would be returned to them, but when the Applicants requested invoices for the expenses allegedly incurred by Ms Wang, Selina Heron advised the Applicants that they would not receive any refund and that deductions would be made against the full amount of the deposit.
26. Mr Raju submitted that he returned to India after the tenancy had ended. He returned to the UK in June 2023 to find that the deposit had still not been released.
27. The Applicant submitted that the cleaning company referred to on the invoice lodged by the Respondent does not exist, and the Applicants has been unable

to find this company. It was also submitted that the date on the invoice was incorrect, and the amount differed to what they had been told via WhatsApp message from Ms Wang.

28. It was submitted that Mr Raju had attended at the Property sometime later to collect mail and noticed that flooring had been replaced, and he did not consider that this had been required.

29. It was submitted that it was only when the Applicants submitted the application to the tribunal, that they found that Selina Heron was not an owner of the Property.

30. It was submitted that at the commencement of the tenancy, the Applicants paid one month's rent and a deposit of £3,200, all to the Indian agency. Said agency thereafter transferred half of the deposit (£1,600) to the landlord. The Indian agency have since refunded the portion of deposit retained by them and there remains £1,600 left to be returned to the Applicants.

31. It was submitted that the Applicants were unaware of the rules surrounding houses in multiple occupation ("HMO") and the HMO licencing regime. The property had three bedrooms and there were four tenants residing within the property, all of whom were single, unrelated people. The two girls shared a room. The property did not have an HMO licence.

- Respondents' evidence

32. The Second-Named Respondent, Jennifer Wang, submitted that she did not consider that a tenancy agreement with the Applicants was necessary and that the agreement that had been in place with the Indian agency would have been sufficient.

33. The Respondent submitted that she did not attend a telephone call with Selina Heron and the Applicants, prior to the Applicants moving into the Property.

34. Ms Wang submitted that the owner of the Property, Mr Zhongquan Wang, is a friend of hers. It was submitted that Jennifer Wang had entered into a lease of the Property from Mr Wang, with his consent for Ms Wang to thereon sub-lease to her own tenants. It was submitted that Jennifer Wang previously resided in the Property herself. Jennifer Wang submitted that Selina Heron was a friend and they used to work together. Ms Heron finds tenants for Ms Wang and it was Ms Heron who had the contact with the Indian agency and who sourced the tenants for the Property.

35. Ms Wang submitted that she has no other properties that she owns or which she leases to other tenants.

36. Ms Wang submitted that the Indian agency paid the £1,600 deposit to Ms Heron, and which Ms Heron held on Ms Wang's behalf. Ms Wang submitted

that she had tried to register with a tenancy deposit scheme but she was unable to do so because she did not own the Property. Ms Wang submitted that she did not call any of the tenancy deposit schemes to explain that she was a landlord of the Property with a sublease in place. She had only tried to register online and in doing so they asked if she was the legal owner, which she is not. From that, Ms Wang took the view that she was unable to lodge a deposit in the scheme on that basis.

37. Ms Wang submitted that after the Applicants had moved into the Property in the September, she received a noise complaint in the November from the upstairs neighbour who had complained directly to Mr Wang, the owner. Mr Wang had called Ms Wang about this. Ms Wang had gone to the Property to talk to the Applicants about the noise complaint. The Applicants had told her that they were having a group study and denied any noise. Ms Wang submitted that there had been mess in the garden and there had been a further complaint in January that there had been a party in the flat where more than 10 people were in attendance and a complaint had been made to the Police. It was submitted that a third complaint was made by a neighbour in April, after which Ms Wang told the Applicants that they needed to leave the Property. Ms Wang submitted that no formal written notice was served on the Applicants as she did not think that she need to do so, as she had talked to them face to face. It was submitted that the Applicants told her that they were looking for other accommodation but they needed more time and she gave them an extra couple of weeks. They moved out on 20 May 2023.
38. Ms Wang submitted that she couldn't check the condition of the Property on 20 May as she was working. She attended the property on 22 May where she took photos. After that the Applicants contacted her for return of their deposit. Ms Wang submitted that she told the Applicants that the Property was not clean and that they needed to come back and clean the Property, clear all outstanding utility bills and fix any damages. They did not do so.
39. Ms Wang submitted that thereafter she returned the Property to the landlord as she no longer wished to sublet to new tenants. The landlord had complained to her that his new tenants were unable to register the utilities in their name because the Applicants had an outstanding debt.
40. Ms Wang submitted that the Applicants had damaged the floor and it required to be replaced. Ms Wang submitted that there was damage to the kitchen floor as well as the hall, both of which were fitted with laminate flooring. She referred to photographs lodged. Ms Wang submitted that she had not completed an inventory report of the condition of the Property at the start of the tenancy.
41. Ms Wang submitted that she had incurred costs of £492 in cleaning of the Property, fixing the sink in the bathroom and sealant. Ms Wang submitted that she had instructed a cleaning company which comprised of both children and adults, to clean the Property and they charged her for their time. Ms Wang and Ms Heron also spent time cleaning the Property but they did not charge the Applicants for their time.

42. Ms Wang submitted that she had to replace a double bed frame (located in Mr Sunesh's room) which she had purchased on Facebook marketplace for £50 and referred to a screenshot of the advert lodged with the tribunal.
43. Ms Wang submitted that she had incurred costs of £690 in replacing the floor and referred to B&Q receipts lodged with the tribunal. This was to replace the flooring in the kitchen and the hall and covered only the cost of the materials as a friend had carried out the labour at no cost.
44. Ms Wang submitted that the remaining £368 of the deposit continues to be held by Ms Heron.
45. Under cross examination, Ms Wang confirmed that the complaints about rubbish related to rubbish located in the front garden. Ms Wang confirmed that she had no evidence to produce in relation to this.
46. Ms Wang confirmed that she often helps friends who need tenants sourced, but she does not own any other properties nor does she let out any other properties herself.
47. When questioned regarding the errors on the cleaning invoice relating to the figures and the dates, Ms Wang stated that these were typographical errors but that she had incurred costs of £492 being the sum that she had paid to the cleaning company.

- Findings in Fact

48. The Tribunal made the following findings in fact:

- (i) The parties entered into a private residential tenancy agreement which commenced September 2022 and ended 20 May 2023;
- (ii) The Applicants paid a deposit of £1,600 to the Respondent;
- (iii) The Respondent failed to lodge the deposit of £1,600 into an approved tenancy deposit scheme under Regulation 3 of the 2011 Regulations;
- (iv) The Respondent failed to provide the statutory information to the Applicant under Regulation 42 of the Regulations;
- (v) The Deposit had not been returned to the Applicants.

- Findings in Law

49. The Tribunal made the following findings in law:

- 49.1 The Respondent was in breach of their duties under Regulation 3 of the 2011 Regulations, which states 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.

49.2 The Respondent was in breach of their duties under Regulation 42 of the 2011 Regulations, which states as follows:

42.—(1) The landlord must provide the tenant with the information in paragraph (2) within the timescales specified in paragraph (3).

(2) The information is—

(a) confirmation of the amount of the tenancy deposit paid by the tenant and the date on which it was received by the landlord;

(b) the date on which the tenancy deposit was paid to the scheme administrator;

(c) the address of the property to which the tenancy deposit relates;

(d) a statement that the landlord is, or has applied to be, entered on the register maintained by the local authority under section 82 (registers) of the 2004 Act;

(e) the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid; and

(f) the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement.

(3) The information in paragraph (2) must be provided—

(a) where the tenancy deposit is paid in compliance with regulation 3(1), within the timescale set out in that regulation; or

(b) in any other case, within 30 working days of payment of the deposit to the tenancy deposit scheme.

49.3 The Tribunal must grant an order in terms of Regulation 10 which states as follows:

10. If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—

(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 sheriff 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.

- **Reasons for Decision**

50. The Tribunal was satisfied that the Respondent was in breach of their duties under Regulations 3 and 42 as aforesaid.

51. The Tribunal was satisfied that Ms Wang was the landlord to the Applicants as tenants, having entered into a lease with the owner, Mr Wang, to allow her to sublease directly to the Applicants. Ms Wang therefore, was the sole landlord in this leasing arrangement with the Applicants and the sole liable party.

52. The Tribunal considered the terms of Regulation 3 of the Regulations. The definition of a “relevant person” is contained within section 83(8) of the Anti-social Behaviour etc (Scotland) Act 2004 and is set out as follows:

“83(8) In this Part—

“relevant person” means a person who is not—

(a) a local authority;

(b) a registered social landlord; or

(c) Scottish Homes; and

“unconnected person”, in relation to a relevant person, means a person who is not a member of the family of the relevant person.”

53. Accordingly, the Tribunal is satisfied that Ms Wang is both a “relevant person” for the purposes of the Regulations, and that the tenancy entered into between Ms Wang and the applicants is a “relevant tenancy” under said Regulations as the tenants are unconnected persons to Ms Wang.
54. The Tribunal was satisfied on the basis of the evidence of Ms Wang, that she had entered into a leasing arrangement with the owner of the Property (Mr Wang), under which Ms Wang had consent of the owner to enter into a subleasing arrangement with the tenants over the Property. Accordingly, the Tribunal is satisfied that in terms of such a leasing arrangement, Jennifer Wang is a relevant person for the purposes of such a leasing arrangement and therefore falls under the terms of Regulation 3 and must adhere to the obligations contained therein.
55. The Tribunal was not satisfied that Ms Wang had carried out any appropriate investigations as to her legal obligations as a landlord in general, but also in particular under the Regulations. Ms Wang stated in her evidence that she had tried to lodge the deposit in a scheme by using one of the tenancy deposit scheme’s websites (she was unable to confirm the specific scheme provider). The tribunal was not satisfied that Ms Wang had taken any appropriate advice, nor educated herself as regards her obligations to ascertain how she could go about lodging a deposit on the basis of the leasing arrangement she had entered into. She stated in her evidence that she did not attempt to contact any of the scheme providers by telephone to explain her specific circumstances. The Tribunal was satisfied that Ms Wang was in clear breach of the terms of her obligations under Regulation 3 of the said Regulations.
56. The 2011 Regulations were introduced to provide security for tenants in paying over deposits to landlords and to address an issue with some landlords taking tenancy deposits and then failing to pay them back where they were lawfully due at the end of the tenancy. The 2011 Regulations also provide that parties have access to an independent and impartial dispute resolution mechanism within a scheme to address any deposit deductions which require to be considered.
57. By her failure to lodge the deposit into an approved tenancy deposit scheme, the deposit was not protected for a period of 8 months. The Tribunal did not consider it reasonable that the deposit had been withheld and not returned to the tenants following their departure from the Property. By her failure to lodge the deposit with a scheme, she had deprived the tenant of access to a free and impartial scheme arbitration service to determine whether or not the landlord was entitled to withhold said deposit.

58. In considering the level of award, the Tribunal noted that the maximum award is three times the amount of deposit taken. The deposit taken here was £1,600. Ms Wang had considered there to be some grounds for retention (which, for the avoidance of doubt, the Tribunal was not satisfied that there was sufficient evidence for the vast majority). Ms Wang had failed to ensure that she understood her legal obligations as a landlord and made no attempts to educate herself. The Tribunal did not find this to be at all satisfactory. The Tribunal noted that Ms Wang had stated in her evidence that she had asked Ms Heron, as her property agent, to hold the tenancy deposit on her behalf as she felt that this was better than Ms Wang holding it herself. The Tribunal was not persuaded as to the reasoning here and did not consider that this was in any way a mitigating factor. The Tribunal noted that Ms Wang had attempted to withhold costs which it was not satisfied were due, had failed to provide information to the tenants on costs deducted when asked, and when she did provide information as to costs, the information provided was unclear and incorrect. The Tribunal considered that Ms Wang's behaviour had been entirely misguided and that she clearly had little understanding of her obligations as a landlord, however it was not persuaded that she was intentionally attempting to deprive the tenants of their deposit for no reason at all (albeit acknowledging how misguided her own reasoning was). Taking into account all of the circumstances, the Tribunal was satisfied that an appropriate award would be £3,200.

- Decision

59. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent(s) for payment to the Applicant in the undernoted sum:

THREE THOUSAND TWO HUNDRED POUNDS (£3,200) STERLING

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.

F. Watson

Legal Member/Chair

Date: 18 September 2024