



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/24/2121

Re: 8 Trottick Mains, Dundee DD4 9DN (“the Property”)

Parties:

Zainab Alkandari, 20 Summerfield Cottages, Glasgow G14 ORB (“Applicant”)

Stobmuir Enterprises Limited, 15 Albert Street, Dundee DD4 6NS (“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 £1,875.

Background

1. The Applicant made an application in Form G ("Application") dated 9 May 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 tenancy agreement which commenced on 23 August 2023.
 - Deposit Protection Certificate from Safe Deposits Scotland which noted that the deposit for the Property was received and registered on 10 April 2024.
 - Copy email from the Applicant to Affinity Property Management dated 8 April 2024 in which the Applicant stated that she wished to terminate the tenancy from that date.

2. A copy of the Application and notification of a Case Management Discussion fixed for 18 October 2024 was given to the Respondent by Sheriff Officer on 13 September 2024.

Case Management Discussion ("CMD")

3. A CMD took place on 18 October 2024 by conference call. The Applicant was in attendance. There was no appearance by the Respondent.
4. The Tribunal noted that in terms of the tenancy agreement, the tenancy had commenced on 23 August 2023 and the deposit was £750. The Applicant confirmed that was correct. The Applicant told the Tribunal that she paid the deposit along with 6 months' rent before the tenancy started. The Tribunal noted that an email had been lodged which indicated the tenancy terminated on 8 April 2024. The Applicant confirmed that was correct.
5. The Tribunal noted the certificate from Safe Deposits Scotland stated that the deposit was not protected until 10 April 2024. The Respondent confirmed that this was correct. She said that the deposit was only protected after she asked the Respondent where the deposit was lodged. The Applicant told the Tribunal that she had rented a property from the Respondent before. She said the previous property address was 19 Woolworth Court in Dundee. She said she paid a deposit of £500 and it was not protected. She said that the deposit was not returned after the tenancy ended.
6. The Tribunal asked the Applicant if the deposit for the Property was returned to her. She said that she came to an agreement with the Respondent regarding the amount of the deposit to be returned to her. She said that £175 was returned to her by Safe Deposits Scotland on 14 May 2024.
7. The Tribunal noted the date on which the tenancy commenced, the amount of the deposit, the date on which the deposit was paid, that it had not been lodged timeously in accordance with the 2011 Regulations and that it had not become protected until 10 April 2024. The Tribunal expressed the view that it had sufficient information to proceed to make a decision without the need for further procedure. The Applicant 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 entered into a tenancy agreement which commenced on 23 August 2023.

2. The Applicant paid to the Respondent a deposit of £750 before the tenancy commenced.
3. The deposit became protected by Safe Deposits Scotland on 10 April 2024.
4. The deposit was not paid to the administrator of an approved scheme in compliance with the timescales set out in Regulation 3 of the 2011 Regulations.
5. The deposit of £750 was paid into an approved scheme some 6 months outwith the timescales stated in the 2011 Regulations.
6. £175 of the deposit was returned to the Applicant on 14 May 2024 by Safe Deposits Scotland.

Reasons for the Decision

8. 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. The Tribunal was satisfied that the Respondent did not lodge the deposit in accordance with the timescales required by the 2011 Regulations. The deposit was lodged some 6 months late.
9. 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."

10. The Tribunal considered all of the circumstances presented to it by the Applicant. The Respondent had chosen not to attend the CMD. In those circumstances no mitigating factors were before the Tribunal. No explanation was given for the failure to comply with the 2011 Regulations. The only mitigating factor was that the Respondent had, belatedly, placed the deposit in an approved scheme. The information provided by the Applicant regarding a previous tenancy indicated that the Respondent was aware of the 2011 Regulations but chose not to comply. That was an aggravating factor.
11. Having regard to factors put forward by the Applicant the Tribunal determined that the sanction should be £1,875 in the particular facts and circumstances of this case. This figure is 2.5 times the deposit.

Decision

The Tribunal granted an Order for payment of £1,875 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.

J.Devine

Legal Member

Date: 18 October 2024