

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“The Regulations”) and Section 71 (1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/PR/23/3466 and FTS/HPC/CV/23/3467

Re: Property at Bottom Right Flat, 18 Argyle Street, St Andrews, KY16 9BU (“the Property”)

Parties:

Ms Osemudiamen Elimimian, 73 Bayhampton Drive, Brampton ON, L6P 3A9, Canada (“the Applicant”)

Mrs Mary Rigby, 46 Aytoun Road, Pollokshields, Glasgow, G41 5HN (“the Respondent”)

Tribunal Members:

Mr McLaughlin (Legal Member) and Mrs Barclay (Ordinary Member)

Decision

[1] The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) made an award in terms of Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 ordering that the Respondent pay the Applicant the sum of £2,400.00, being an amount equal to two times the value of the relevant tenancy deposit. The Tribunal also made a Payment Order in favour of the Applicant against the Respondent in the additional sum of £200.00.

Background

[2] In Application with reference FTS/HPC/PR/23/3466, The Applicant seeks an award under the Regulations in respect of the failure of the Respondent to place a tenancy deposit in an approved scheme as required by Regulation 3. The Respondent has submitted representations acknowledging the breach and putting forward some background information which they wished the Tribunal to consider. In Application with reference FTS/HPC/CV/23/3467, the Applicant had sought a payment order in the sum of £1,200.00 for the return of the deposit itself which was said to have remained retained by the Respondent. Subsequent to these proceedings being raised, the Respondent had returned £1,000.00 to the Applicant. The Applicant consequently today now only sought a Payment Order in the sum of £200.00. The Applications had called for Case Management Discussions and then been continued to an evidential Hearing for evidence to be heard and a final decision made.

The Hearing

[3] The Applications called for a Hearing by video call at 10 am on 24 October 2024. The Applicant was personally present. The Respondent was also personally present. Neither party had any preliminary matters to raise. The Tribunal began hearing evidence from the Applicant. The Tribunal then heard evidence from the Respondent. Each party had the right to cross-examine the other and following on from the conclusion of each witness's evidence, each party had the opportunity to make closing submissions addressing the Tribunal on how it ought to decide the Applications.

[4] The Tribunal comments on the evidence heard as follows.

Ms Osemudiamen Elimimian

[5] The Applicant explained that she moved into the Property on 13 September 2022. She signed a Private Residential Agreement with the Respondent. She had been a student at St Andrews University at the time. She paid a deposit of £1,200.00 to the Respondent around the time she moved in. She moved out of the Property in either June or July 2023. She had requested her deposit back but described being met with "radio silence". It was only then she discovered that the deposit had never been registered with an approved scheme. The Respondent refused to return any money to the Applicant at all until she eventually returned her £1,000.00 after the Tribunal Applications had been served on the Respondent. The Respondent described how the failure to have her deposit returned and caused her financial difficulties as she had been relying on that money to pay energy bills which had subsequently accrued late payment and interest fees.

[6] Having heard from the Applicant, the Tribunal then heard from the Respondent, Mrs Mary Rigby.

Mrs Mary Rigby.

[7] Ms Rigby began her evidence by attempting to list reasons as to why she didn't think the Respondent was a good tenant. The Respondent frequently required to be directed to focus on matters relevant to the matters at hand. She eventually explained that she owned this Property and one other property next door to the Property which she managed on behalf of her daughter.

[8] She explained that she had been minded to sell the Property but had allowed herself to be "*persuaded*" to rent it out to the Applicant. She explained that she was aware of the Regulations but had forgotten about it with this tenancy. The Respondent explained that she only returned £1,000.00 rather than the full £1,200.00 because the Applicant had damaged a fridge and a chair. The Respondent claimed that she had email evidence of this but accepted that she had not submitted any documentation in support of her position despite the Direction made previously setting out timescales for the lodging of any evidence to be relied on.

[9] The Respondent also said that she was 77 years of age and that her age might have come into her failure to register the deposit. The Respondent provided very little detail about the supposed damage to the chair and fridge and the evidence here was vague and unconvincing. The Tribunal was also less than impressed with the Respondent's persistent attempts to criticise the Applicant rather than deal with the relevant issues before the Tribunal and her own failure to register the deposit properly.

[10] Having heard from parties, the Tribunal made the following findings in fact.

Findings in Fact

- I. *On 13 September 2022, the parties entered into a tenancy agreement by which the Respondent let the Property to the Applicant by virtue of a Private Residential Tenancy. The Applicant paid the Respondent a deposit of £1,200.00 as a relevant tenancy deposit within the meaning of the Regulations on or around 13 September 2022.*
- II. *The deposit was never registered by the Respondent in an approved scheme.*
- III. *The Respondent failed to comply with Regulation 3 to pay the deposit paid by the Applications into an approved tenancy deposit scheme within 30 working days of the commencement of the tenancy.*
- IV. *The Respondent returned the sum of £1,000.00 to the Applicant after the Applicant had raised these proceedings. The Respondent appears to have withheld*

£200.00 because she alleges that the Applicant damaged a fridge and a chair in the Property.

- V. *The sum of £200.00 is resting owed by the Respondent to the Applicant as the balance outstanding on the deposit.*
- VI. *There is no credible evidence before the Tribunal that the Applicant damaged a chair or a fridge in the Property.*

Decision

[11] Having made the above findings in fact, the Tribunal had to determine what, if any, award ought to be made under Regulation 10. The Tribunal proceeded on the basis that the determination of the award required the Tribunal to exercise its judicial discretion to consider what would be fair, proportionate and just.

[12] In forming its approach to where this particular breach sat on the scale of sanctions open to the Tribunal, The Tribunal considered that there were certain factors that weighed towards both leniency and severity. The Tribunal considered that the fact that the Respondent was 77 years of age and that age may have increased her forgetfulness, weighed in favour of a degree of leniency. However, this had to be balanced with factors which weighed in favour of a more serious sanction. These factors were the casual approach to the deposit shown by the Respondent and the fact that the Respondent's position seems to acknowledge that she never had any justification for retaining at least £1,000.00 of the deposit. There appeared to be no good reason at all as to why this sum was only paid to the Applicant when proceedings were raised.

[13] The Tribunal therefore concluded that the breach ought neither to be treated at the lower end nor at the higher end of the scale of options open to the Tribunal. It ought to be treated as being at the middle end of the scale.

[14] The Tribunal considered that the sum to be awarded in terms of Regulation 10 ought to be a sum equal to two times the sum of the deposit of £1,200.00, being £2,400.00.

[15] The Tribunal also decided to award a Payment Order in favour of the Applicant against the Respondent in sum of £200.00. This sum was resting owed by the Respondent to the Applicant. In any event there was scant evidence to support the Respondent's position that the Applicant had damaged items in the Property. Even if she had, the Respondent should not benefit from her failure to register the deposit. The deposit ought to be returned and if the Respondent genuinely believes that the Applicant damaged items, then it is open to the Respondent to raise her own Application for a Payment Order against the Respondent.

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.

A. McLaughlin

Legal Member/Chair

24 October 2024
Date