



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014 on an application made under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/23/4380

Re: Property at 17A North West Circus Place, Edinburgh, EH3 6SX (“the Property”)

Parties:

Mr Adrian Howard, 22/7 Avon Road, Edinburgh, EH4 6RD (“the Applicant”)

WGS Developments Ltd, The Cornmill, Tamworth Road, Fillongley, Coventry, CV7 8DZ (“the Respondents”)

Tribunal Member:

George Clark (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be granted without a Hearing and made an Order for Payment by the Respondents to the Applicant of the sum of Six Thousand Pounds (£6,000).

Background

1. By application, dated 7 December 2023, the Applicant sought an Order for Payment in respect of the failure of the Respondents to comply with Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The Applicant’s complaint was that the Respondents had failed to lodge his deposit of £2,000 in an approved tenancy deposit scheme. The Applicant was seeking an Order for Payment of three times the amount of the deposit.
2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties, commencing on 30 January 2023 at a rent of £1,475 per month, with a deposit of £2,000, an email from the Applicant to the Respondents of 28 March 2023, asking them to

confirm where his deposit had been lodged, and a response from the Respondents of 30 March 2023, stating that it had been “logged” with Safe Deposits Scotland but that they had not paid the deposit into the scheme, as they were “in the process of arranging exploring other protection schemes in order to obtain a better level of service.” They included what was stated to be a screenshot from Safe Deposits Scotland. It named the Parties and the commencement date of the tenancy and that there was a deposit of £2,000, but did not state that the deposit had been lodged with them or that it was protected.

3. The Applicant also provided a copy of his email of 23 August 2023, giving the Respondents notice of his intention to end the tenancy. In that email, he again asked the whereabouts of his deposit. On 29 August 2023, the Respondents sent the Applicant the same information as was contained in their email of 30 March.
4. The Applicant included with his application a copy of a Certificate from Safe Deposits Scotland (“SDS”) indicating a tenancy deposit on 29 August 2023. The amount protected was stated to be “£0.00”. In addition, he provided a Deposit Protection Certificate from My Deposit Scotland, confirming that a deposit had been lodged with them on 14 September 2023 and that the amount protected was £490.78. It recorded the fact that the deposit had been collected from the Applicant on 2 February 2023 and that the tenancy had ended on 20 September 2023.
5. Case Management Discussions arranged for 5 March 2024 and 5 June 2024 were postponed, due to the principal of the Respondents being abroad. A Case Management Discussion was arranged for 29 October 2024.
6. On 23 October 2024, the Respondents made written representations to the Tribunal. They stated that the deposit was “registered” with SDS on 2 February 2023. Their understanding was that both Parties would receive confirmation when a deposit was “logged” with SDS, but it was apparent that the Applicant did not receive such a confirmation. The Respondents had experienced multiple service level issues with SDS, and an alternative provider was being searched for at the time that the tenancy began. The Applicant contacted them on 28 March 2023 regarding the status of the deposit. They replied on 30 March 2023 explaining that the deposit was “logged” with SDS and advising him to contact SDS directly if he had any issues. They also explained that the deposit had not been paid into the SDS account as they were searching for alternative service providers. On or about August 2023, all deposits maintained by SDS for the Respondents were in the process of being transferred to My Deposit Scotland. The Respondents were told that in order to transfer the deposit, the funds must first be lodged with SDS. This was done on 29 August 2023. It took a further 15 days for the deposit to be transferred from SDS to My Deposit Scotland.

7. The Respondents appreciated that the process of transferring deposits was cumbersome. It had never been their intention to cause alarm to their tenants, but the existing system with SDS did not provide a reasonable level of service for query responses, so they had to make the difficult decision to transfer deposits. The Applicant's deposit was "registered" with SDS within the 30-day period after the commencement of the tenancy. At the time, the Respondents were not made aware by SDS that the funds would need to be deposited as well. They noted that the Applicant had not raised any concerns regarding the deposit between March and August 2023 after they communicated with him.

Case Management Discussion

8. A Case Management Discussion was held by means of a telephone conference call on the morning of 29 October 2024. The Applicant was present. The Respondents were represented by Mr Tolga Falahat.
9. The Respondents repeated that they were not aware at the time that they actually had to lodge the deposit. They had registered it and it was when they were looking to transfer deposits to My Deposit Scotland that they were told they had to lodge it first with SDS. SDS had not chased them to lodge the deposit after they registered it. The Respondents accepted that their letting agents must have known of the requirement but did not communicate it to the Respondents. Mr Falahat confirmed that the Respondents had other tenanted properties in Scotland.
10. The Applicant told the Tribunal that he had paid the deposit to the letting agents before the tenancy started. He directed the Tribunal to the clear statement in Clause 11 of the Tenancy Agreement that the deposit must be lodged in an approved tenancy deposit scheme. He said that he had found out from SDS that they had received the deposit on 29 August 2023 and had immediately transferred it to My Deposit Scotland.
11. Mr Falahat asked the Tribunal to note that the Applicant had received the balance of the deposit at the end of the tenancy and that it had, throughout the tenancy until 29 August 2023, been in their bank account. He contended that "lodging" and "depositing" were two different things. As a result of the regulatory burden, the Respondents had decided to diversify away from Scottish tenancies.

Findings in Fact

- The Parties entered into a Private Residential Tenancy of the Property commencing on 30 January 2023. The rent was £1,475 per month, with a deposit of £2,000.
- ON 23 August 2023, the Applicant gave notice to terminate the tenancy.
- The Respondents did not lodge the deposit of £2,000 with a tenancy deposit scheme until 29 August 2024.

- Clause 11 of the Private Residential Tenancy Agreement between the Parties states “The Landlord must lodge any deposit they receive with a tenancy deposit scheme within 30 working days of the start date of the tenancy. A tenancy deposit scheme is an independent third-party scheme approved by the Scottish Ministers to hold and protect a deposit until it is due to be repaid.”

Reasons for Decision

12. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 states that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation to enable it to determine the application without a Hearing.
13. Under Regulation 3(1) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“The 2011 Regulations”), a landlord must, within 30 working days of the beginning of the tenancy pay the deposit to the scheme administrator of an approved scheme. Under Regulation 10, if satisfied that the landlord did not comply with any duty in Regulation 3, the Tribunal **must** order the landlord to pay to the tenant an amount not exceeding three times the amount of the tenancy deposit. Regulation 42 of the 2011 Regulations requires a landlord to provide certain information to tenants, including the name and contact details of the scheme administrator of the tenancy deposit scheme to which the deposit has been paid.
14. The view of the Tribunal was that the Respondents’ failure to lodge the deposit with an approved tenancy deposit scheme was extremely serious. They had sought to justify that failure to the Applicant by saying they were looking at transferring deposits to other providers, and professed ignorance of the need to lodge the deposit funds, but if they were looking to transfer to another provider, they must, either directly or through their letting agents, have lodged deposits in respect of their other properties in Scotland. They laid emphasis on the fact that the Applicant had not raised any concerns after they emailed him on 30 March 2023. The view of the Tribunal was that it was not for the Applicant to chase them. Their legal duty was clear and was set out in the tenancy agreement. They knew by 30 March 2023 that they had not lodged the deposit, they carefully used the word “logged” in their email of that date, and still did nothing to secure the deposit until 29 August 2023, by which time the Applicant had given notice to end the tenancy. They sought to somehow blame the Applicant for not having chased them and also SDS for not having done so. The legal obligations on landlords are absolutely clear. They state that a landlord must “pay the deposit” to an approved scheme within 30 working days of the beginning of the tenancy. The Regulations do not say “logged” or “registered”. The Respondents’ argument that “lodging” and “depositing” are two different things was completely wrong. The words mean exactly the same in relation to the movement of funds. The Respondents, being based in England, may have been initially unaware of their obligations, but

that is no excuse. They used local letting agents, to whom the deposit was paid by the Applicant. Their explanation was entirely unconvincing and their attempts to deflect responsibility to the Applicant and to SDS were unworthy. The Applicant's deposit was a substantial amount of money, and it was at risk from 30 January until 29 August 2023.

15. Having taken into account all the facts and circumstances of this particular case, the amount of the deposit, the Respondents' failure to recognise when the Applicant raised the matter with them that the deposit must now be lodged with one of the approved schemes, the length of time it had been at risk and the absence of any effort by the Respondents to lodge it with SDS until they made the business decision to transfer deposits to another approved provider, and their insinuations that the Applicant and SDS were somehow culpable in the matter, the Tribunal decided that the Respondents should be ordered to pay to the Applicant the maximum amount permitted under Regulation 10 of the 2011 Regulations, namely three times the amount of the deposit (£6,000).

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.

George Clark

Legal Member/Chair

29 October 2024
Date