



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/24/2927

Re: Property at 1/1 40 Highburgh Road, Glasgow, G12 9EF (“the Property”)

Parties:

Mr Rory Chapman, 37/12 Milton Street, Edinburgh, EH8 8HB (“the Applicant”)

Mrs Jacqueline Smith, 11 Thorn Drive, Bearsden, Glasgow, G61 4ND (“the Respondent”)

Tribunal Members:

Mary-Claire Kelly (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for payment in the sum of SIX HUNDRED AND FIFTY POUNDS (£650)

Background

1. By application dated 26 January 2024 the applicant seeks an award under the Tenancy Deposit Schemes (Scotland) Regulations 2011. The applicant lodged with the application:
 - Copy lease
 - Proof of payment of deposit.
 - Bank statements showing deposit payment
2. The respondent lodged written representations in advance of the case management discussion (“cmd”) together with the following documents:
 - Copy death certificate

- GP letter
- Scottish Fire Service Incident report
- Correspondence regarding insurance claim dated 22 December 2022

3. A cmd took place via teleconference on 13 November 2024.

Case management discussion – 13 November 2024- teleconference

4. Both parties were in attendance. The applicant confirmed that he was seeking the maximum award available under the regulations of three times the deposit amounting to £1950. The respondent accepted that there had been a breach of the tenancy deposit regulations but opposed an award at the level sought. She stated that there were mitigating factors which the Tribunal should take into account in determining the amount of award sought. She referred to the relatively short length of time that the deposit had been unprotected, and the fact that she had voluntarily placed the deposit in the scheme on 2 February 2024.
5. The discussion identified that there was no dispute among parties in relation to the facts of the case which are set out below.
6. The Tribunal sought views from the parties as to whether it was necessary or preferred to fix a hearing in respect of the application. Both parties confirmed that there was no additional information that they would seek to bring before the Tribunal and stated that they did not wish a hearing to be fixed.
7. The Tribunal heard from parties in relation to the level of award being sought. The applicant stated that it was clear that there had been a breach of the tenancy deposit regulations. He stated that he had been disappointed to find that the deposit had been unprotected when he checked with the deposit schemes in June 2024. He stated that he had left the tenancy on 13 May 2024. The deposit had been returned to him, less some agreed deductions. He stated that he sought the maximum award as there had been a clear breach, and notwithstanding any mitigating circumstances the respondent continued to have a duty under the regulations to deal with the deposit appropriately.
8. The respondent accepted that there had been a breach of the regulations. She stated that she tried to be a good landlord. She had thought that her relationship

with the applicant had been good and had been taken aback when Sheriff Officers served the application on her. The respondent had lodged written representations setting out difficult personal circumstances which she had been dealing with shortly after the tenancy commenced on 30 October 2022. In particular, as set out in the written representations her mother passed away after a long and debilitating illness on 3 November 2022. The respondent had been a carer for her mother and dealt with the arrangements following her death. The respondent also stated that she herself had been experiencing poor health during this period which was confirmed in the GPs report which had been lodged. In addition, a commercial property which the respondent and her husband had been refurbishing was affected by a serious flooding incident, attended by the Fire Service on 16 December 2022. The incident was stressful and required the respondent's attention. The respondent was open about the fact that in the months following the tenancy commencing she was under a tremendous amount of stress which affected her greatly. She stated that she was sorry that the tenancy deposit had not been placed in an appropriate scheme immediately after the tenancy commenced however this was due to her dealing with challenging personal circumstances. She stated that as she began to work through things she realised the mistake and took steps to remedy it. The respondent stated that she had one other property which was rented out however that was managed by letting agents. She stated in her view her breach of the regulations was at the lower end of the scale due to the mitigating circumstances during the period when the deposit was unprotected and also as she placed the deposit in the scheme after a relatively short period.

9. The applicant did not dispute any of the facts set out by the respondent relating to her personal circumstances around the time the tenancy commenced however he maintained that an award of the maximum amount was nevertheless appropriate.

Findings in fact

10. Parties entered into a private rented tenancy agreement with a commencement date of 30 October 2022.
11. A deposit of £650 was paid at the commencement of the tenancy.

12. The respondent failed to lodge the deposit in a tenancy deposit scheme as required in terms of regulation 3 of the [Tenancy Deposit Schemes \(Scotland\) Regulations 2011/176](#) until 2 February 2023.
13. The deposit was returned to the applicant under agreed deductions at the conclusion of the tenancy agreement.
14. The tenancy agreement ended on 13 May 2024.
15. The present application was accepted on 3 July 2024.
16. The respondent's mother passed away on 3 November 2022.
17. The respondent was involved in arrangements following the death of her mother.
18. The respondent experienced health issues and stress during the period from July 2022 and March 2023.
19. The respondent was impacted by a serious flooding incident on 16/17 December 2022 which occurred at a property jointly owned by her and her husband.

Reasons for the decision

20. Rule 18 states:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

21. The Tribunal was satisfied that having regard to the undisputed facts of the case it was able to make a determination and that it was in the expressed interests of both parties to make a determination without the need for a further hearing.

22. The Tribunal took into account the parties written and oral submissions and the various documents lodged by parties.

23. Regulation 3 of the 2011 Regulations provides inter alia :

(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..

24. Regulation 9 of the 2011 Regulations provides:

(i) 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.

(ii) An Application under paragraph 1 must be made no later than three months after the tenancy has ended.

25. Regulation 10 of the 2011 Regulations provides inter alia :

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

26. The facts of the case as set out in the findings in fact above were not in dispute. It was accepted that there had been a breach of the tenancy deposit regulations and that the present application had been made timeously. The

Tribunal required to consider an appropriate level of award in terms of regulation 10 in light of the information provided.

27. The legal test to be applied in determining the level of sanction is set out in *Jenson v Fappiano* 2015 G.W.D. 04-89 and subsequent case law. Those authorities are reviewed by Sheriff Cruickshank in *Ahmed v Russell* 2023 S.L.T. (Tr) 33 and confirm the Tribunal should seek to assess a sanction that is “fair and proportionate” in all the circumstances, taking into account both aggravating and mitigating circumstances.
28. In reaching a determination the Tribunal took into account that there had been a breach of the 2011 regulations which had left the deposit unprotected for 3 months and 2 days. The tenancy had continued on for a period of approximately 14 months after the deposit had been placed in a suitable scheme. The Tribunal took into account that the applicant had been disappointed at the breach of the regulations and that there was no exemptions from the regulations.
29. Set against the clear breach of the regulations for the relevant period the Tribunal considered the mitigating factors set out by the respondent. The Tribunal noted that the respondent had experienced a period of difficulty in her personal life immediately after the tenancy commenced including the death of her mother, her own poor health and issues arising in a property as a result of a serious flooding incident. The Tribunal accepted that these combined factors provided an explanation for the delay in lodging the deposit. The Tribunal gave weight to the fact that the respondent had lodged the deposit voluntarily on 2 February 2023 prior to any request by the applicant. The Tribunal also accepted that the respondent was genuinely sorry for the breach and accepted that she had made a mistake. The Tribunal noted that there had been no subsequent issues with the deposit or financial impact on the applicant.
30. Taking all of the above factors into account the Tribunal determined the breach was at the lower end of the scale and determined to make an award in the sum of £650 in favour of the applicant.

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.

M-C.Kelly

Legal Member/Chair

13 November 2024 _____
Date