



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/24/3392

Re: Property at Flat C, 10 Hosefield Road, Aberdeen, AB15 5NB (“the Property”)

Parties:

Miss Laura Vallis, 85 Cairncry Road, Aberdeen, AB16 5NF (“the Applicant”)

Mrs Heather Davis, 81 High Street, Kimpton, Hitchin, Hertfordshire, SG4 8PU (“the Respondent”)

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 Respondent to the Applicant of the sum of Two Hundred and Fifty Pounds (£250).

Background

1. By application, dated 24 July 2024, the Applicant sought an Order for Payment in respect of the failure of the Respondent to comply with Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The Applicant’s complaint was that the Respondent had failed to lodge her deposit of £400 in an approved tenancy deposit scheme within the time limit specified in the 2011 Regulations. The Applicant was seeking an Order for Payment of such sum as the Tribunal might determine, up to three times the amount of the deposit.
2. The application was accompanied by a copy of a Short Assured Tenancy Agreement (“SAT”) between the Parties, commencing on 25 November 2019 at a rent of £400 per month, with a deposit of £400, and a further SAT from 25 November 2020 to 25 November 2021, with the rent and deposit unchanged. She also provided a copy of an email of 4 June 2024 from the Respondent, replying to an email and WhatsApp message regarding the

deposit. In her email, the Respondent thanked the Applicant for drawing the question of the deposit to her attention and told her that it had now been rectified and it had been lodged with MyDeposits Scotland. The Applicant also supplied copies of emails of 3 June 2024 from Letting Protection Scotland and 4 June 2024 from Safe Deposits Scotland, both confirming that they had at no time held the deposit, and an email of 4 June 2024 from MyDeposits Scotland confirming that the deposit had been lodged with them.

3. The Applicant also provided a copy of an email of 1 June 2024, giving the Respondent four weeks' notice of her intention to end the tenancy.
4. On 29 October 2024, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 19 November 2024.
5. On 18 November 2024, the Respondent made written representations to the Tribunal. She admitted that she had made a mistake but said that she had remedied the situation immediately she became aware of it. The deposit had been released in full to the Applicant on 21 July 2024, so the Applicant had suffered no loss or hardship as a result of the Respondent's mistake. She added that the Respondent ought to have given two months' rather than four weeks' notice of termination and that the Respondent had allowed her to leave without charging her rent to which she would have been entitled for the second month. She cited issues with the Applicant's conduct, including disputes with neighbours and the condition of the Property when she left it.

Case Management Discussion

6. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 11 December 2024. Both Parties were present.
7. The Respondent told the Tribunal that the failure to lodge the deposit had been a complete oversight on her part, for which she apologised. She had rented out the Property before and had used the same Tenancy Deposit Scheme. The first she knew of her omission was when the Applicant raised the matter of the deposit after giving notice. She stressed that she immediately rectified her mistake by lodging the deposit on 3 June 2024 and that she raised no objections to the deposit being returned in full to the Applicant, despite the fact that she could have asked for it to be paid to her, as the Applicant had not given the requisite two months' notice.

Findings in Fact

- The Parties entered into a Short Assured Tenancy of the Property commencing on 25 November 2019. The rent was £400 per month, with a deposit of £400.
- On 1 June 2024, the Applicant gave 4 weeks' notice to terminate the tenancy.

- The tenancy agreement provided for a two months' notice period.
- The Respondent did not lodge the deposit of £400 with a tenancy deposit scheme until 3 or 4 June 2024.

Reasons for Decision

8. 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.
9. 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.
10. The view of the Tribunal was that the Respondent's failure to lodge the deposit with an approved tenancy deposit scheme was very serious, although there was no evidence that it was deliberate. The deposit had only been lodged when the Applicant gave notice and asked about it, so was at risk from 25 November 2019 until 4 Jun 2024, but the Tribunal was satisfied that it was due to an oversight on the part of the Respondent, who had acted swiftly and responsibly from the point that she became aware of the mistake she had made.
11. The Tribunal considered the amount of the deposit, and the Respondent's failure to lodge it with an approved scheme until 3 or 4 June 2024, after the Applicant had given notice of termination, with the deposit having, therefore, been at risk for a period of more than four and a half years. The issues raised by the Respondent regarding the Applicant's conduct, problems with neighbours and the condition in which the Property was left were irrelevant but mitigating factors were that the deposit had been lodged whenever the Applicant queried the position and had repaid it in full to the Applicant on 21 July 2024, so the Applicant had not suffered any actual loss, and the fact that the Respondent did not charge the Applicant rent beyond the end of the four weeks' notice period given by the Applicant, when in terms of the tenancy agreement, she would have been entitled to two months' notice and rent. The Applicant had suffered minor inconvenience by having to make enquiries of the various Tenancy Deposit companies and of the Respondent, but this was very short-lived, as the deposit was lodged on 3 or 4 June 2024, only two or three days after the

Applicant herself first became aware that it had not been protected from the outset of the tenancy. There was no direct loss and the stress and inconvenience to the Applicant was minor and short-lived.

12. Having taken into account all the facts and circumstances of the case, the Tribunal decided that a fair, reasonable and proportionate amount that the Respondent should be ordered to pay to the Applicant would be £250.

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

11 December 2024
Date