



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”)

Chamber Ref: FTS/HPC/PR/24/0429

Re: Property at 34 Timmons Park, Lochgelly, Fife, KY5 9PP (“the Property”)

Parties:

Miss Abi Rae, Gareth Hempseed, 34 Timmons Park, Lochgelly, Fife, KY5 9PP (“the Applicant”)

Mrs Carol Suttewood, Unknown, Unknown, Unknown (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

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 Applicants the sum of £3,000.00, being an amount equal to three times the value of the relevant tenancy deposit.

Background

[2] The Applicants seek 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. Service of the Application had been effected on the Respondent by means of advertisement on the Tribunal website as her whereabouts could not reasonably be

ascertained. The Application had called for a Case Management Discussion and then been continued to an evidential Hearing for evidence to be heard and a final decision to be made. The Tribunal had also ordered that the Application be intimated to an email address associated with the Respondent which had been referred to in the papers. However, nothing was heard from the Respondent. It had been noted previously that since the lodging of the Application, the Second Applicant, Mr Gareth Hempseed was now sadly deceased.

The Hearing

[3] The Application called for a Hearing by conference call at 10 am on 8 January 2025. Ms Iona Watson of Frontline Fife appeared on behalf of the Applicants. The Tribunal explained that the expectation was that evidence would be heard before any decision could be made and accordingly Ms Rae's presence was anticipated. The Tribunal allowed some time for Ms Watson to speak to Ms Rae who then joined the call at 10.30. The Applicants had no preliminary matters to raise. The Tribunal began hearing evidence from the Ms Rae.

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

Ms Abi Rae

[5] Ms Rae gave evidence in a straightforward manner. She moved into the Property on 15 September 2023. She and her partner Mr Gareth Hempseed paid a deposit of £1,000.00 to the Respondent on 16 September 2023. During the currency of the tenancy, Mr Rae asked the Respondent about whether her deposit was protected and registered in an approved scheme. Text messages to this effect were before the Tribunal. The Respondent never answered the question. This Application was then submitted to the Tribunal in January 2024 when the Applicants were still in occupation of the Property. The Applicants moved out of the Property on 29 March 2024. Mr Hempseed then passed away in April 2024. The sum of £700.00 was then returned to Ms Rae on 14 May 2024. The sum of £300.00 was retained by the Respondent supposedly for "*damages*". Ms Rae confirmed that she would have disputed this had the deposit been properly registered in an approved scheme but she was deprived of the opportunity to do so by the non-compliance with the Regulations.

[6] Ms Rae was 20 years of age at today's date and would have been 19 or so when she signed the tenancy. The Applicants had first encountered the Respondent when they bought some furniture second hand on Facebook Marketplace. The Respondent had sold them some furniture and explained that she also had a property for them to rent which the Applicants ultimately did. Ms Rae explained that the Property was not furnished with smoke alarms and these were only installed at a later date when the Applicants reported safety issues to Fife Council. The tenancy agreement itself was also not

conform to the standardised Private Residential Tenancy Agreement. There was also evidence of the Respondent not having been initially entered on the Landlord Register and only taking action to have her name listed once Frontline Fife began representing the Applicant. The Respondent had served a notice to leave on the Applicants on the basis that she wished to sell the Property. The Tribunal were however informed that the property was however then re-let. There was reference made to the Respondent writing to the Applicants and quoting legislation from the year 1737 in an apparent claim that the rent would be “doubled” if the Applicants didn’t leave.

[7] The Tribunal found no reason not to take the Applicant’s evidence at face value. It was also fully corroborated by the relevant emails which were before the Tribunal.

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

Findings in Fact

- I. *The parties entered into a tenancy agreement whereby the Respondent let the Property to the Applicants by virtue of a tenancy agreement dated 15 September 2023;*
- II. *The Applicants paid the Respondent a deposit of £1,000.00;*
- III. *During the tenancy, the Applicants enquired with the Respondent about whether she had registered the deposit in an approved scheme as required by the Regulations;*
- IV. *The Respondent failed to adequately respond;*
- V. *This Application was then submitted to the Tribunal in January 2024 when the Applicants were still in occupation of the Property. The Applicants moved out of the Property on 29 March 2024. Mr Hempseed passed away in April 2024.*
- VI. *The sum of £700.00 was returned to the Applicants by the Respondent on 14 May 2024.*
- VII. *The Respondent deducted £300.00 from the Applicants’ deposit in respect of her own arbitrary assessment of costs associated with restoring the Property to the condition it was in at the commencement of the tenancy.*

VIII. *The Respondent failed to comply with Regulation 3 to pay the deposit paid by the Applicants into an approved tenancy deposit scheme within 30 working days of the commencement of the tenancy;*

Decision

[9] 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.

[10] The Tribunal took into account the fact that the sum of £700.00 had been returned to the Applicants fairly promptly and that the tenancy had been relatively brief. However the Tribunal considered that these factors were outweighed by those suggestive of a higher sanction.

[11] Those other factors included the Respondent's refusal to meaningfully respond to the Applicants about the deposit during the tenancy and thereafter even to engage with the Tribunal about these matters. The Tribunal also formed the impression that the Respondent appeared intentionally to operate "*below the radar*" in that she recruited her tenants in a somewhat unorthodox manner, used unusual tenancy documentation, failed to provide basic safety measures such as smoke alarms and even register as a landlord with the local authority. The Tribunal therefore considered that the failure to register the deposit was no isolated incident but rather part of the landlord's style of doing business. The Tribunal considered that its disapproval of such an approach should be expressed by the imposition of the highest sanction open to the Tribunal to make.

[12] The Tribunal considered that the highest sum ought to be awarded in terms of Regulation 10 which is a sum equal to three times the sum of the deposit of £1,000.00, being the sum of £3,000.00. The Tribunal will order that interest run on that sum from today's date until payment at the rate of 6 per cent per year.

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

Andrew McLaughlin

Legal Member/Chair

17 January 2024.

Date