



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/24/1829

Re: Property at 2/2 357 POLLOKSHAWS ROAD, GLASGOW, G41 1QT (“the Property”)

Parties:

Ms Kirsty Miller, 3/2, 5 MOIR STREET, GLASGOW, G1 5AE (“the Applicant”)

MRS PAULINE BURNS, 17 HATHAWAY DRIVE, GIFFNOCK, G46 7AE (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the Respondent to the Applicant in the sum of £1425.00.

Background

1. The Tribunal received an application from the Applicant in terms of Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Rules 2017 which was dated 22nd April 2024. The Application included a lease which detailed that a deposit of £950 had been paid.
2. On 17th July 2024, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent by letterbox service and by post. This was evidenced by Certificate of Intimation dated 17th July 2024.
3. On 30th April 2024, the Applicant emailed the Housing and Property Chamber attaching information including confirmation that the deposit has not been lodged in a scheme and that the deposit was paid.

4. On 11th May 2024 the other tenant in the tenancy, Miss Rachael Liddell, emailed the Housing and Property Chamber to advise that she was content for the Applicant to deal with the application on behalf of both of them.
5. A CMD was held on 16th August 2024 at 11.30am by teleconferencing. The Applicant was present and represented herself. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent did not make any representations in advance of the hearing. The tribunal issued a decision dated 16 August 2024.
6. By email dated 9th September 2024, the Respondent emailed the Housing and Property Chamber to say that she had not received notification of the CMD. She wished to make her representations to the Tribunal in terms of the case. The Tribunal treated this email as a recall request.
7. By its decision dated 4 October the Tribunal recalled its decision and a new CMD was assigned.

The Case Management Discussion

8. A CMD was held by teleconference on 26 February 2025. Both the Applicant and the Respondent attended in person.
9. After explaining the purpose of a CMD the Tribunal established that it was agreed that the tenancy commenced on 21 September 2022 at a rent of £950.00 per calendar month increasing to £978.50 per month in February 2024. It was also agreed that the tenancy ended on 1 April 2024 and that the Respondent had failed to lodge the Applicant's deposit of £950.00 in an approved Tenancy Deposit scheme.
10. By way of explanation for failing to lodge the deposit in an approved scheme the Respondent explained that on about 3 or 4 April 2024 she went to start the proceedings with Safe Deposits Scotland to return the Applicant's deposit and discovered it had not been lodged. The Respondent said at first she thought it was a mistake by Safe Deposits as she had two other deposits that were shown as not paid in when they had been paid in but she did then accept after checking with her bank that the Applicant's deposit had not been lodged. The Respondent went on to say that the failure to lodge the deposit was totally out of character and that her only explanation was that at the time she had been diagnosed with a serious health condition and this had led to the oversight on her part. The Respondent said that she had four rental properties and that she had been a landlord for about sixteen years. She said that she always lodged tenant's deposits in an approved scheme and had never had proceedings raised against her before. The Respondent said she had not tried to be evasive and that the failure to lodge the deposit was a genuine mistake. The Respondent confirmed the deposit had been repaid in full.

11. In response to a query from the Tribunal both parties agreed that they were satisfied the Tribunal had sufficient information before it to make a decision without the need for a hearing.

Findings in Fact and Law

12. The parties together with Miss Rachael Liddell entered into a Private Residential tenancy agreement that commenced on 21 September 2022 at an initial rent of £950.00 per calendar month.

13. The Applicant and Miss Liddell paid the Respondent a deposit of £950.00 at the commencement of the tenancy.

14. The Respondent failed to lodge the deposit in an approved Tenancy Deposit Scheme throughout the duration of the tenancy

15. The tenancy ended on 1 April 2024.

16. The Respondent repaid the deposit in full to the Applicant.

17. The Respondent is an experienced landlord and owns four rental properties.

18. The Respondent was diagnosed with a serious health issue around the time of the commencement of the tenancy.

19. The Respondent was in breach of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”).

20. The Applicant’s application to the Tribunal under Regulation 9 of the 2011 Regulations is timeous.

21. The Tribunal must make an order in terms of Regulation 10 of the 2011 Regulations.

Reasons for the Decision

22. It was agreed between the parties that the tenancy commenced on 21 September 2022 and ended on 1 April 2024 and that the initial rent was £950.00 per month rising in February 2024 to £978.50 per month. It was also agreed that the Applicant had paid a deposit of £950.00 at the commencement of the tenancy and that the deposit had never been lodged in an approved scheme in accordance with Regulation 3 of the 2011 Regulations. It was also agreed that the Applicant’s application to the Tribunal was timeous in terms of Regulation 9 of the 2011 Regulations.

23. In light of the Tribunal's findings in fact and law the Tribunal must in terms of Regulation 10 of the 2011 Regulations order the Respondent to pay the Applicant an amount not exceeding three times the amount of the deposit. In reaching its decision the Tribunal is required to exercise its judicial discretion to consider what would be fair, proportionate and just.

24. The Tribunal took account of the fact that the deposit had been returned to the Applicant quite promptly but it also took account of the fact that the deposit had not been lodged in an approved scheme throughout the tenancy, a period of some eighteen months during which time the Applicant's deposit was unprotected. The Tribunal also noted that the Respondent was an experienced landlord with a number of let properties and therefore ought to have been very familiar with the importance of complying with the 2011 Regulations. The Tribunal did however accept that the Respondent had not previously been the subject of any other applications under the 2011 Regulations and may well have had other things on her mind at the time due to a serious health issue. The Tribunal was therefore satisfied that it would not be appropriate to impose a sanction at the upper end of the scale open to it. However, the Tribunal considered the failure to lodge the deposit in an approved scheme throughout the entire duration of the tenancy to be a moderately serious breach of the 2011 Regulations and that an appropriate and just amount to award was one and a half times the deposit namely £1425.00. the Respondent briefly mentioned seeking time to pay but was unable to provide any details of her income and expenditure and therefore the Tribunal simply granted the order for payment.

Decision

25. The Tribunal being satisfied it had sufficient information before it to make a decision found the Applicant entitled to an order for payment by the Respondent to the Applicant in the sum of £1425.00.

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.

Graham Harding
Legal Member/Chair

26 February 2025
Date