



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 of the Housing (Scotland) Act 2016 on an application made under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/24/5026

Re: Property at 42 Mid Street, Kirkcaldy, Fife, KY1 2PN (“the Property”)

Parties:

Mr Martin Glass, 42 Mid Street, Kirkcaldy, Fife, KY1 2PN (“the Applicant”)

Mr Ivan Graham, 15 Biggin Wa's, Kirkcaldy, Fife, KY1 3DS (“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 decided without a Hearing and made an Order for Payment by the Respondent to the Applicant of the sum of One Thousand Pounds (£1,000).

Background

1. By application, dated 25 October 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 his deposit of £500 in an approved tenancy deposit scheme.
2. The application was accompanied by a copy of a Private Residential Tenancy Agreement (although it was incorrectly and incompetently headed “Short Assured Tenancy Agreement”) between the Parties, commencing on 1 September 2019 at a rent of £500 per month, with a deposit of £500, evidence of the payment of the deposit to the Respondent on 31 August 2019, and confirmation from Mydeposits Scotland, Letting Protection Service Scotland and Safe Deposits Scotland that the deposit had not been lodged with them. The tenancy agreement stated that the deposit would not be paid into an approved tenancy deposit scheme. The

Applicant also provided screenshots of messages between the Parties regarding the period of notice the Applicant had to give. The Respondent insisted it was two months, in terms of the tenancy agreement, whilst the Applicant referred to the fact that in a Private Residential Tenancy, the tenant can give 28 days' notice at any time. The messages also disclosed a disagreement regarding the return of the deposit, the Respondent insisting that he would not return it until the Applicant provided evidence from the utilities providers that the final account had been settled, the Applicant responding that this was not an issue that should delay refund of the deposit, as the contract was between the Applicant and the utilities providers. In the event, the Applicant did provide the information requested by the Respondent on 24 November 2024 and the correspondence indicated that the deposit was returned in full on 28 November 2024.

3. On 22 February 2025, 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 15 March 2025.
4. On 5 March 2025, written representations were submitted on behalf of the Respondent by Robert F MacDonald solicitors, Kirkcaldy. They stated that at the time the lease was entered into, the Respondent was not aware that the Regulations were mandatory and that he could not contract out of them. The Applicant had moved out of the Property on 16 November 2024 and the deposit was repaid in full on 28 November 2024. The Respondent wished the Tribunal to take into account that the deposit had been refunded in full prior to the Respondent being put on notice that an application to the Tribunal was being made, that the communications between them demonstrated that the Parties had a good relationship during the tenancy and that the failure to lodge the deposit was a result of the Respondent's ignorance of the legal position.
5. On 12 March 2025, Miss Iona Watson of Frontline submitted written representations on behalf of the Applicant. She stated that the Applicant moved out on 16 November 2024, but the Respondent had refused to return the deposit until the Applicant cleared the utilities bill. He struggled to get the deposit back. She also pointed out that the tenancy agreement said that the deposit would not be paid into a scheme.

Case Management Discussion

6. A Case Management Discussion was held by means of a telephone conference call on the morning of 17 April 2015. The Applicant was represented by Miss Iona Watson of Frontline Fife, Kirkcaldy. The Respondent was represented by Mr Robert MacDonald of Robert F MacDonald solicitors, Kirkcaldy.
7. Mr MacDonald told the Tribunal that the Respondent accepted that he had failed to comply with the 2011 Regulations, but that he had done so out of ignorance. He had not taken advice before entering into the tenancy and

had borrowed a style of lease from someone else. The Respondent had not been significantly disadvantaged, as the deposit had been repaid fairly speedily, 12 days after the tenancy ended, probably sooner than would have been the case had it been lodged in an approved scheme. Mr MacDonald confirmed that the Respondent owns other properties and has taken steps to ensure the deposits are lodged in an approved scheme.

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 serious, but appeared to have arisen out of ignorance rather than being a wilful act. Ignorance of the law is, however, no excuse, and the deposit had been at risk for the entire duration of the tenancy, more than four years. The 2011 Regulations had been in force for many years before the tenancy agreement was entered into and a responsible landlord should have been aware of them and that he could not contract out of them. In addition, the Respondent had withheld the deposit pending confirmation that the final utilities bill had been paid. The purpose of the 2011 Regulations is to protect tenants' deposits and to avoid tenants being disadvantaged in claims by landlords when tenancies come to an end, as any dispute between the parties is settled by an independent process carried out by the approved deposit scheme. The Tribunal noted that in the present case, the dispute between the Parties was for a very limited duration. It should, however, never have arisen.
11. Having taken into account all the facts and circumstances of this particular case, the Tribunal decided that the Respondent's failure was serious and prolonged but was not at the most egregious end of the scale. The delay in refunding the deposit had caused the Applicant inconvenience but was only 12 days. The Tribunal decided that a fair, reasonable and

proportionate sum that the Respondent should be ordered to pay to the Applicant would be £1,000.

12. In passing, the Tribunal would note that, despite its being called a Short Assured Tenancy with a stated notice period of two months, it was in fact a Private Residential Tenancy, as it was entered into after 1 December 2017, and that the Applicant could, therefore, give 28 days' notice at any time.

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

17 April 2025
Date