



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

Chamber Ref: FTS/HPC/PR/24/4082

Re: Property at 20 Salisbury Street, Kirkcaldy, KY2 5HN (“the Property”)

Parties:

Mr Chris Easson, 20 Salisbury Street, Kirkcaldy, KY2 5HN (“the Applicant”)

Mrs Shona Jarrett, 8 Old Edinburgh, Boarhills, St Andrews, KY16 8PZ (“the Respondent”)

Tribunal Members: Ruth O’Hare, Legal Member

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to refuse the application.

Background

- 1 This is an application seeking a payment order under Rule 103 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) and Regulation 10 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”). The Applicant sought the order as a result of the Respondent’s alleged failure to pay his tenancy deposit into an approved tenancy deposit scheme.
- 2 The application was referred to a case management discussion (“CMD”) to take place by teleconference on 29 April 2025. The Tribunal gave notification of the CMD to the parties under Rule 17(2) of the Rules. Said notification was served upon the Respondent by sheriff officers. Both parties were invited to make written representations.
- 3 On 1 March 2025, 26 March 2025, 30 March 2025, and 29 April 2025, the Tribunal received written representations from the Respondent and Alex Jarrett. On 2 April 2025 the Tribunal received an email from Mr Alex Jarrett confirming that he was authorised to represent the Respondent in the proceedings as a joint landlord of the property.

- 4 On 25 March 2025 and 24 April 2025 the Tribunal received written representations from the Applicant. The Applicant also submitted video evidence for consideration, which was uploaded to an online platform accessible by both parties.

The CMD

- 5 The CMD took place on 29 April 2025 by teleconference. The Applicant joined the call. Mr Alex Jarrett represented the Respondent.
- 6 The Tribunal explained the purpose of the CMD and proceeded to hear submissions from the parties. For the avoidance of doubt the following is a summary of the key elements relevant to the Tribunal's determination of the application and does not constitute a verbatim account of the proceedings.
- 7 The Applicant explained that he had submitted a previous application to the Tribunal and an order had been made against the Respondent for her failure to lodge his deposit in a tenancy deposit scheme. The Tribunal had not however sought any further evidence from the Respondent to confirm that she had paid the deposit to a scheme. The Applicant had been left in limbo. He now noted that the deposit had in fact been paid to SafeDeposits Scotland, which was not the scheme named in the deposit clause in the tenancy agreement between the parties. The Respondent was therefore in breach of the terms of the contract. With regard to the payment order made by the Tribunal in the previous application, the Applicant confirmed that he had chosen not to pay rent over consecutive months rather than requiring the Respondent to pay him a lump sum. The Applicant explained that there were other issues surrounding the tenancy, including a subject access request he had made to the Respondent. He intended on taking further action against the Respondent out with these proceedings. He felt that Mr Jarrett and the Respondent were trying to mislead the Tribunal.
- 8 Mr Jarrett confirmed that the deposit had been lodged with SafeDeposits Scotland as soon as they became aware of the error. He referred to the certificate from the deposit scheme which confirmed receipt of the deposit on 21 October 2021. He acknowledged that there may have been a lack of clarity over which scheme had been used. However, the deposit was protected. Both he and the Respondent took their responsibilities as landlords seriously. They continued to try and engage with the Applicant regarding the tenancy. Mr Jarrett confirmed that there were other matters ongoing before the Tribunal involving the parties, however he and the Respondent were keen to keep things civil.

Reasons for decision

- 9 The Tribunal considered that it had sufficient information to make a decision following the CMD in terms of Rules 17 and 18, in the absence of a hearing. Both parties raised various matters in their written representations and verbal submissions regarding this tenancy, which were not relevant to this application. It

was clear that the relationship between the parties has significantly broken down. The Tribunal was however satisfied that it had sufficient information to reach a decision on the application following the CMD.

- 10 The Tribunal was satisfied based on the deposit protection certificate submitted by the Respondent that she had complied with the duty under regulation 3(1)(a) of the 2011 Regulations, with the certificate confirming receipt of the deposit by SafeDeposits Scotland on 21 October 2021. The Tribunal took into account the Applicant's concerns about the lack of information regarding his deposit. The Tribunal noted his submission that the deposit had not been paid into the scheme named in the tenancy agreement. However, the duty under regulation 3(1)(a) simply requires a landlord to submit the deposit into an approved tenancy deposit scheme. The 2011 Regulations do not allow an order to be granted where the landlord is in breach of contract. Accordingly, whilst the Tribunal understood the Applicant's concerns, they did not constitute grounds for making an order under Regulation 10.
- 11 The Tribunal also had regard to the previous decision of the Tribunal dated 22 November 2021 in the application FTS/HPC/PR/21/2158. In that case the Tribunal made an order against the Respondent in favour of the Applicant in the sum of £250 as a result of the Respondent's failure to comply with the duty imposed on her by regulation 3(1)(a) with regard to the Applicant's deposit. The Tribunal considered that this application was essentially an attempt to re-litigate a matter that had already been determined by the Tribunal, and the Respondent cannot be penalised twice.
- 12 The Tribunal was therefore satisfied that it could not entertain the application under Regulation 10 of the 2011 Regulations. The Tribunal therefore refused the application.

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.

Legal Member: Ruth O'Hare

Date: 29th April 2025

Ruth O'Hare