

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 (1) of the Private Housing (tenancies) (Scotland) Act 2016 and Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Chamber Ref: FTS/HPC/PR/20/2150 and FTS/HPC/CV/2306

Re: Property at Flat 1/1, 1240 Argyle Street, Glasgow, G3 8TJ ("the Property")

Parties:

Miss Kritika Dass, Mr Aitor Nicolas Azemar Carnicero, Mr Eoin McKiernan, A-1225 3rd Floor, Gid Colony, Mayur Vihar - 3, Delhi, 110096, India; Flat 2/1, 656 Eglinton Street, Glasgow, G5 9RP; Flat 3/1, 77 Braeside Street, Glasgow, G20 6QS ("the Applicant")

Mrs Kulwant Sidhu, Ms Florence Dai, 32 Arisaig Drive, Bearsden, Glasgow, G61 2PD; 16C Braid Street, Glasgow, G4 9YA ("the Respondent")

Tribunal Members:

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

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that

Background

This matter called for a Hearing by conference call at 10 am on 24 March 2021. The Applicants were all present on the call. Ms Sidhu was present together with her husband, Mr Sidhu who she wished to represent her and her son who was on the call to support her. Ms Dai was also present. The Tribunal also had the benefit of a Punjabi interpreter who assisted Ms Sidhu and the Tribunal by interpreting everything that was

said into Punjabi and in turn interpreting everything Ms Sidhu said in Punjabi into English.

The Tribunal called to hear two Applications with references FTS/HPC/CV/2306 and FTS/HPC/PR/20/2150.

In the former of these the Applicants were seeking a Payment Order in respect of deposits allegedly paid but not returned to the Applicants in respect of tenancies at the Property. In Application FTS/HPC/PR/20/2150, the Applicants were seeking an award under Regulation 10 (a) of The Tenancy Deposit Schemes (Scotland) Regulations 2011 for the non registration of these deposits with an Approved Scheme.

A Case Management Discussion took place on 18 February 2021 and Directions had been made ordering the Respondents to lodge a full statement of their defences to the Application by 11 March 2021. Ms Sidhu submitted representations on 9 March 2021 Ms Dai submitted representations setting out her position 22 March 2021. Ms Dai's representations were clearly substantially late but they also appeared to refer to events which were not strictly relevant to the issues before the Tribunal. The Tribunal did not reject either set of representations though and instead decided to adopt a more flexible approach regarding them should the need arise during the Tribunal.

Preliminary Matters

The Hearing began by addressing certain preliminary matters which the Tribunal wished to be resolved prior to any hearing of evidence. During this discussion it became apparent that Ms Sidhu now acknowledged that she alone was the landlord of the Property. This was set out in her representations received and again confirmed by her before the Tribunal. Her position was that she had instructed Ms Dai to act as an agent for her in respect of the Property and her supposed defence was that she should not be considered liable in respect of either Applications because she had instructed Ms Dai to manage these tenancy matters for her.

The Tribunal did not consider this to be a valid defence as the Regulations were binding on landlords and did not provide any such possible defence to an application otherwise properly brought before the Tribunal.

The Tribunal pointed out to Ms Sidhu that any claim she may have against Ms Dai for negligence was not a valid defence to these Applications. Accordingly, Ms Sidhu's position did not present any valid defence but, at best, could only amount to mitigation in respect of any award the Tribunal may contemplate making in respect of Application FTS/HPC/PR/20/2150. But the Tribunal would have to hear evidence before it could competently make any such decision.

The Tribunal also asked Mr Azemar, who the Applicants had agreed to take the role of their spokesman, to confirm the specific sums said to have been claimed by the Applicants as there was a discrepancy in that FTS/HPC/PR/20/2150 referred to a deposit claimed of £920.00 whilst FTS/HPC/CV/20/2306 referred to a figure of £1,220.00.

Mr Azemar explained that the correct sum paid as a deposit was £1,220.00 and the lesser sum had been offered to the Respondents as a sort of compromise that took account of some cleaning charges which were not otherwise accepted by the Applicants and was purely put forward as a negotiating position.

There was no dispute that the deposits were not registered with an approved deposit protection scheme as demanded by the Regulations.

After an extensive discussion regarding these preliminary matters, the Tribunal adjourned to consider what further procedure to adopt. Following on from a brief adjournment, the tribunal decided to begin hearing evidence from the parties.

The Hearing of Evidence.

Ms Kritika Dass

Ms Kritika Dass is the first Applicant. She moved into the Property in September 2018. She described paying a deposit of £120.00 on the day she moved in by bank transfer to Florence Dai and a further payment of £300.00 a few days later. She moved out of the Property on 5 September 2020. She is 23 years old and is currently living at home in India. She is not currently employed or studying. She confirmed that despite extensive requests her deposit has not been returned to her and she could think of no good reason as to why it hadn't been repaid to her. She described suffering financial hardship as a result of not having her deposit returned to her. The Tribunal found Ms Dass to be entirely credible and reliable. Having ultimately heard evidence from all parties the Tribunal considered that there was no reason whatsoever to suspect that Ms Dass was not telling the truth. All parties were given the opportunity to question Ms Dass. Neither of the Respondents made any attempt to question her and so her evidence was ultimately unchallenged by both Respondents.

Mr Aitor Nicolas Azemar Carnicero

The Tribunal heard from Mr Azemar. He described moving into the Property in September 2019 and moving out in August 2020. Mr Azemar described paying a deposit of £400.00 when he first moved in and recalled that this was paid alongside his first rental payment of £400.00 which was transferred to Florence Dai by making a bank transfer of £200.00 and handing over £600.00 in cash. Mr Azemar explained that he had not received any of this deposit back and that he could think of no good reason at all for it not being returned. He explained that Florence Dai and Mrs Sidhu kept blaming each

other about it. Mr Azemar is a 26 year old PhD student living in Glasgow studying mathematics. He explained that it had been frustrating not having his deposit returned because it meant that he could not support his elderly parents as much as he would like. He did however have a job and so he was not too badly affected by not receiving his deposit back.

The Tribunal found Mr Azemar to be entirely credible and reliable. Having ultimately heard evidence from all parties the Tribunal considered that there was no reason whatsoever to suspect that he was not telling the truth. All parties were given the opportunity to question Mr Azemar. Ms Dai did not make any attempt to question Mr Azemar. Mr Sidhu restricted his questions to Mr Azemar to putting to him that it was not possible to get £600.00 out of a cash machine in one withdrawal. Mr Azemar explained that he had gotten the money out over more than one day. Nothing in this question and answer gave the Tribunal any concern that Mr Azemar was not being truthful.

Mr Eoin McKiernan

Mr McKiernan gave evidence that he moved into the Property in October 2018 and paid a deposit of £400.00 alongside a first rental payment of £400.00 to Florence Dai by bank transfer. Mr McKiernan moved out in August 2020 and confirmed that he had not received his deposit back despite requests. He described that this had caused him financial hardship because he had to borrow money to cover outgoings. Mr McKiernan is also a PhD Student and is 24 years of age. The Tribunal found Mr McKiernan to be entirely credible and reliable. Having ultimately heard evidence from all parties the Tribunal considered that there was no reason whatsoever to suspect that he was not telling the truth. All parties were given the opportunity to question Mr McKiernan. Neither Respondent wished to ask any questions and so Mr McKiernan's evidence was unchallenged.

Ms Florence Dai

The Tribunal heard evidence from Florence Dai. It became swiftly apparent from the beginning of her evidence that Ms Dai was being deliberately evasive in her answers and appeared completely incapable of answering even the most straightforward question.

Her primary position appeared to be that Ms Sidhu was the landlord and that she herself was not responsible for the failure to register the deposits and to return the deposits.

She was asked by the Tribunal whether it was true that that the Applicants had transferred her £1,220.00 as deposits for the Property. Ms Dai appeared desperately unwilling to answer the question.

This evasiveness appeared ludicrous at times and ultimately the Tribunal was left with the impression that Ms Dai had no intention of being honest with the Tribunal. The Tribunal asked Ms Dai what her occupation was and she answered that she worked in E-commerce. The Tribunal asked her if she was involved in property lettings as a side-line and at this point Ms Dai denied having any involvement whatsoever in Property lettings of any kind.

The Tribunal put to her that this seemed completely at odds with the evidence of the three Applicants and Ms Sidhu's position who all described her as an agent of sorts for the Property. At this point Ms Dai appeared to admit that she was a lettings agent for the Property and when pressed by the Tribunal stated that she charged Ms Sidhu £500.00 a month for her services. Ms Dai then appeared to try and deny that this was any sort of business relationship.

The Tribunal considered that Ms Dai's evidence was completely farcical. What was clear though was that the Tribunal could not rely on anything Ms Dai said as being truthful or reliable. It was put to her that she was acting illegally as an unregulated lettings agent and eventually Ms Dai appeared to acknowledge that this was the case.

All parties had the opportunity of questioning Ms Dai and only Mr Sidhu wished to do so. Mr Sidhu's questions to Ms Dai soon however deteriorated into an attempted slanging match with accusations of lying being made on both sides. The Tribunal allowed Mr Sidhu to put to Ms Dai that she was lying but ultimately the Tribunal had to intervene to maintain order and carefully manage proceedings whilst also ensuring everything that was said was interpreted into Punjabi for Ms Sidhu.

What the Tribunal could take from this questioning was that there was a dispute between Ms Sidhu and Ms Dai about ultimately whether deposits collected by Ms Dai were handed over to Ms Sidhu.

During the course of the Hearing Mr Sidhu, who was Ms Sidhu's representative, himself began speaking in Punjabi for the interpreter to translate. The Tribunal enquired with Mr Sidhu whether he was comfortable continuing in English and when Mr Sidhu explained that he was, he was asked to speak in English as the interpreter was expressly for the benefit of ensuring that Ms Sidhu, who could not speak English well, could properly and fairly participate in the Hearing.

Ms Kulwant Sidhu

The Tribunal heard evidence from Ms Kulwant Sidhu. Ms Sidhu confirmed that she was a housewife and the Property was her only investment property. She described how she had looked on gumtree and come across Ms Florence Dai who she then instructed to

manage the Property. Ms Sidhu's position was that she had delegated everything about the Property to Ms Dai and she knew nothing about the deposits or what happened to them. Ms Sidhu seemed completely oblivious to the formalities of being a landlord. After hearing her evidence and the evidence of the others, the Tribunal considered that her management of the tenancies appeared shambolic, disorganised and chaotic. The Tribunal considered that the situation the Applicants had found themselves in was a complete mess caused by the chaotic management of the Property.

Ms Sidhu appeared genuine in her belief that all of the management of the Property was being looked after by Ms Dai. Ms Dai had herself confirmed that she deducted from the rents received what the Tribunal considered to be an extremely high monthly fee of £500 for managing the Property.

The Tribunal however could not be sure of what role Ms Sidhu or her husband really had in all this. Whilst the Tribunal noted that the defence of it all being the responsibility of Ms Dai had no merit in it, it could not be ruled out that Ms Sidhu was being exploited to some extent by Ms Dai. However even on the most charitable view, Ms Sidhu was naïve and negligent about ensuring her duties as a landlord were respected.

All parties had the opportunity to ask questions of Ms Sidhu. Ms Dai did wish to ask questions but again these appeared to relate to accusations of dishonesty between Ms Dai and Ms Sidhu. The Tribunal ensured that Ms Dai could ask all relevant questions of Ms Sidhu

Findings in Fact

Having heard evidence and considered the Applications and the evidence submitted, the Tribunal made what findings in fact it could.

- I. *The Applicants were all tenants at the Property and Ms Sidhu was their landlord;*
- II. *Ms Sidhu had entered into some sort of enterprise whereby Florence Dai managed the Property;*
- III. *Ms Dass paid a deposit of £420 to Florence Dai. The deposit had been paid shortly after Ms Dass moved into the Property in September 2018;*
- IV. *Mr Azemar paid a deposit of £400.00 in September 2019 when he moved into the Property to Florence Dai;*
- V. *Mr McKiernan paid a deposit of £400.00 in October 2018 when he moved into the Property to Florence Dai;*

- VI. *Application PC/PR/20/2150 was lodged with the Tribunal on 3 October 2020. Ms Dass moved out of the Property on 5 September 2020 and Mr McKiernan moved out in August 2020. Mr Azemar moved out in August 2020;*
- VII. *Accordingly Application PC/PR/20/2150 had been lodged timeously as per the terms of regulation 9 (2) of the Tenancy Deposit Schemes (Scotland) Regulations 2011;*
- VIII. *The deposits were not registered with any approved deposit protection scheme;*
- IX. *The deposits paid were not returned to the Applicants following their departures from the Property;*
- X. *There is no good reason why the deposits should not have been returned to the Applicants in full;*
- XI. *The deposits paid should be returned to the Applicants;*
- XII. *The Applicants are entitled to compensation under Regulation 10 (a) of The Tenancy Deposit Schemes (Scotland) Regulations 2010;*
- XIII. *Mrs Kulwant Sidhu is the landlord of the Property and is liable to the Applicants for any award made under the aforesaid Regulations and for the return of the deposits paid;*
- XIV. *Ms Florence Dai acted as an unregistered letting agent in respect of the Property;*
- XV. *Neither Respondents appear to show any regard for the hardships and misfortune endured by the Applicants and instead were preoccupied with squabbling between themselves.*

Reasons for Decision

Having made the above findings in fact, the Tribunal decided to grant Application FTS/HPC/CV/20/2306 by making a Payment Order in favour of the Applicants against Mrs Kulwant Sidhu alone in the sum of £1,220.00 with interest to run on that sum at the rate of 5 per cent per annum from the Date of the Hearing being 24 March 2021 until payment.

The Tribunal thereafter proceeded to consider what award should be made to the Applicants in respect of Application FTS/HPC/PR/20/2150.

The Tribunal noted that the authorities have concluded that ultimately assessing any award is a judicial exercise of discretion having heard the circumstances of the case.

In conducting such an exercise, the Tribunal considers that the breach of the Regulations should not be considered to be at the lower end of the scale and neither at the highest.

The Tribunal does take the view that there is a real possibility that Ms Sidhu, who has without doubt been negligent and reckless in the exercise of her duties as a landlord, may have been misled by Ms Florence Dai who the Tribunal considers to be a malignant actor in this situation and who was acting as an unregistered letting agent.

Accordingly, the Tribunal considers that the Applicants should be awarded the sum of £2,240.00 to be paid by Ms Kulwant Sidhu which is twice the value of the deposits which were neither registered nor returned.

Interest will run on that sum at the rate of 5 per cent per annum from the date of the Hearing being 24 March 2021 until payment.

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: Andrew McLaughlin

Date: 24 March 2021