



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”) and Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/PR/20/0355

Re: Property at 36 Salisbury Terrace, Aberdeen, AB10 6QH (“the Property”)

Parties:

**Miss Jemma Healey, 36 Salisbury Terrace, Aberdeen, AB10 6QH
 (“the Applicant”)**

**Mrs Michelle Hickey, Dalvay, 25 Dundee Road, Perth, PH27 7EY
 (“the Respondent”)**

Tribunal Member:

Ms. Susanne L. M. Tanner Q.C., Legal Member and Chair

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that an order must be made in terms of Regulation 10 of the 2011 Regulations requiring the Respondent to pay to the Applicant the sum of FIVE HUNDRED (£500.00) Sterling

1. Procedural background

- 1.1. On 31 January 2020, the Applicant made an application (“the Application”) to the tribunal.
- 1.2. The Application is made in terms of Rule 103 of the 2017 Rules, namely an application for an order for payment where the landlord (Respondent) has failed to carry out duties in relation to tenancy deposits.
- 1.3. The Applicant attached to the Application:
 - 1.3.1. “House share” agreement (not dated), commencing 30 July 2019
 - 1.3.2. Emails from each of the three deposit protection schemes
- 1.4. On 9 January 2020, the Application was considered by a legal member acting under the delegated powers of the President and further information was requested from the Applicant, namely
 - 1.4.1. When, where and how she paid the deposit to the Respondent;
 - 1.4.2. The date that the tenancy began and whether it is ongoing;
 - 1.4.3. The address which was supplied to Info My Deposits Scotland
 - 1.4.4. The address which was supplied to the Letting Protection Service.
- 1.5. On 13 February 2020, the Applicant replied to the further information request, attaching a copy bank statement showing a payment to the Respondent of £200.00 on 23 July 2019. The Applicant stated that the tenancy began on 31 July 2019. The Applicant confirmed that the address provided to the three schemes was 36 Salisbury Terrace, Aberdeen, AB10 6QH. The Applicant stated that she understood that the Respondent had since contacted Safe Deposits Scotland and lodged her deposit as part of a larger deposit, even though they have three individual tenancy agreements and assigned a “lead tenant”. The Applicant advised that she was now wishing to pursue a wider case in relation to the following:
 - 1.5.1. The Respondent did not have landlord registration in place;
 - 1.5.2. The Respondent had not registered the Property as an HMO;
 - 1.5.3. The Respondent breached their tenancy rights by attending the Property without notice, warning or declaration that she had visited; this had escalated to the point of harassment and incident reports had been logged with the police;
 - 1.5.4. The Respondent began eviction proceedings to avoid registering as an HMO and lied to the Council about this to avoid penalty or prosecution;
 - 1.5.5. The Property is running as an HMO but there is not adequate security or fire safety precautions in place;

- 1.5.6. The fire brigade have stated that the breaches are at the level of enforcement order but they are discouraged from completing the necessary legal paperwork in favour of an action plan because “the house is nice and the tenants are taking good care of it”; and
- 1.5.7. The council confirmed that the Property is an unlicensed HMO but cannot take enforcement action “unless the Respondent has been criminally prosecuted by the public (tenant) first”.
- 1.6. On 26 February 2020, the Application was considered by a legal member acting under the delegated powers of the President and further information was requested from the Applicant, namely:
- 1.6.1. Evidence of the end date of the tenancy (if available) and if no evidence is available, confirmation of the end date of the tenancy; or confirmation that the tenancy is ongoing;
- 1.6.2. A reacted bank statement in place of the bank statement produced on 13 February 2020;
- 1.6.3. A copy of any deposit protection certificate issued in respect of the deposit (albeit it is alleged that it has been lodged late and in joint names with the other occupants at 36 Salisbury Terrace, Aberdeen.
- 1.7. On 2 March 2020, the Applicant submitted to emails and provided:
- 1.7.1. Letter from Applicant to Respondent dated 17 February 2020;
- 1.7.2. Deposit Protection Certificate for £600.00 dated 31 January 2020 for 36 Salisbury Terrace, Aberdeen, Aberdeenshire, AB10 6QH for Mr Alex Gow (lead tenant, Mr Alvils Osans and Ms Jemma Healey;
- 1.7.3. Redacted bank statement; and
- 1.7.4. Screen shots of SMS messages with “Michelle Hickey”.
- The Applicant stated that the end date of the tenancy was 29 February 2020.
- 1.8. On 12 March 2020, the Application was accepted for determination by the tribunal.
- 1.9. On 23 March 2020, the tribunal informed the Applicant that due to the Covid-19 pandemic the tribunal was not in a position to fix a Case Management Discussion at that time.
- 1.10. On 2 July 2020, the tribunal notified the parties that the Application had been referred to the tribunal and that a Case Management Discussion (“CMD”) teleconference had been fixed for 10 August 2020 at 10.00 which both parties were required to attend. Parties were advised that the tribunal may do anything

at a CMD which it may do at a hearing, including making a decision on the application. Parties were advised that if they did not attend the CMD, this would not stop a decision or order from being made by the tribunal if the tribunal considered that it has sufficient information before it to do so and the procedure has been fair. The Respondent was invited to submit any written representations she wished by 23 July 2020. The Application paperwork and notification of the hearing was served on the Respondent by Sheriff Officers on 3 July 2020.

1.11. The Respondent submitted written representations and documents in three separate emails, in relation to this and a related case (PR/20/0581). The Respondent confirmed that she had failed to lodge the Applicant's deposit in a tenancy deposit protection scheme and provided her reasons in relation to the same. She stated that this was her first time renting her home and that she had naively rushed into contractual arrangements. She stated that the deposit had been lodged with a deposit protection company. She stated that it had since been returned to the Applicant without any deduction for bills unpaid.

2. Case Management Discussion ("CMD") 10 August 2020 at 1000h – by teleconference

2.1. The Applicant attended the teleconference. She advised that she has an 8 week old baby and she was told to inform the tribunal if any adjournments were required in relation to feeding or care of her child. She advised that she had forwarded an email to the tribunal's offices on Friday with a copy email from a former housemate. She stated that it relates to both cases. IT had not yet been processed by the tribunal's administration. A copy was forwarded to the tribunal for consideration and a copy will be sent to the Respondent.

2.2. The Respondent attended the teleconference. She introduced herself. She confirmed that she had no additional written representations or documents.

2.3. The tribunal chair explained the nature and purpose of the CMD and made reference to the letter previously issued by the tribunal which stated that the tribunal may do anything at a CMD which it can do at a hearing, including reaching a decision on the application and making an order.

2.4. The Respondent's submissions

2.5. The Respondent accepts that the deposit which was taken was not lodged in a scheme for about 5 and a half months. She stated that it is agreed that the

start date of the tenancy was 30 July 2019. It is agreed that a deposit of £200.00 was taken from the Applicant. A deposit protection certificate from Safe Deposits Scotland has been produced dated 31 January 2020. This includes another individual as lead tenant, another individual and the Applicant and is for the sum of £600.00.

2.6. The Respondent stated that it is agreed that the tenancy ended on 29 February 2020, by agreement between the parties.

2.7. The Respondent explained that she made enquiries with Scottish Association of Landlords in January 2020 with regard to security of tenants' deposits. She stated that they were very helpful. They informed her of the obligations and she had not previously been aware of her obligations. She stated that that day she put it into place. She contacted Safe Deposits Scotland (SDS) and she transferred the deposits of the Applicant and two other tenants to SDS.

2.8. She stated that she asked SDS to lodge them together. She asked if it would cause a problem if she wanted to remove one person and she was told that it would not. She stated that she was told that SDS would enable the transfer once the tenant had responded to them. She stated that she had explained to SDS that it was not a joint tenancy but had told them that there were three individual tenants. She wanted to ensure that the deposits could be taken out if one tenant left. In answer to questions from the Chair, she stated that she had not sought any independent advice about whether the deposits for each individual tenancy should be lodged separately and had relied on what she said she had been told by SDS. She could not confirm exactly what information she had provided to SDS when seeking the information, for example, whether they were told that there were three individual tenancy agreements, each with a separate deposit.

2.9. The Respondent referred to Production D, an email from Safe Deposits Scotland, Andy Bell, 14 July 2020 at 1652. She stated that at the time she had made the application she had explained that she had three different tenants and did not understand the process and asked them to talk her through it. She stated that when Ms Healey brought up the fact that it should be in separate accounts she confirmed the same with SDS. She accepted that Mr Bell's email referred to having three separate lodgments and did not actually appear to support her position.

2.10. She stated that she had become a member of SAL but cannot recall if she spoke to them about lodging of tenancy deposits. She explained that it was her very first time doing this and she did what she was told to do by Safe Deposits Scotland.

- 2.11. She stated that she had sent Mr Bell the tenancy agreement. She told him that when it was lodged she was advised that one deposit was satisfactory for all three tenants. She stated that she would be most grateful if he could clarify this. She stated that in a prior email to him she had said: "Thank you for your time. You mentioned joint tenancies. Is this still applicable when the tenants have joint contracts"; and that he said, "if there is a dispute we will ask you to provide all tenancy agreements."
- 2.12. She stated that she combined the three deposits because she did not realise that she could do individual ones. She focussed on whether one could withdraw an individual tenant's deposit.
- 2.13. She did not know anything about the dispute process operated by Safe Deposits Scotland. She stated that her intention was to return the full deposit.
- 2.14. She stated that the Applicant's deposit was returned to her within a few days via the scheme. They advised her to phone and to advise them of which tenant was moving out and she believes that they sent an email asking the Applicant to respond.
- 2.15. She stated that this is the only rental property that she has. This was originally her residential property. Prior to the Applicant's tenancy she was living there. They never shared. She moved out and began letting it. She produced three tenancy agreements herself for rooms in the property and did not get assistance from anyone. There were two other people living there with the Applicant, who were unrelated to the Applicant and each other. She issued three tenancy agreements at the same time. She was not aware of the House in Multiple Occupation ("HMO") requirements. She just rented out bedrooms. She did not realise until she started making enquiries herself in mid-January that SAL said that because there were three people it was considered to be an HMO. Since the Applicant has moved out, she stated that she has planned to move back in. She had a change in work situation. She was going to move back from Glasgow to Aberdeen. However, her mother lives in Perth on her own. When covid came they issued a lockdown and she decided to stay in Perth and shield with her. She stated that there is currently one gentleman living in the property in Aberdeen as another of her tenants left. She stated that it is her intention after the pandemic to move back into the Property.
- 2.16. She stated that she has now registered as a landlord with Aberdeen City Council. She contacted the Council prior to that and she told them about her situation. She stated that they understood that she was not purposely trying to break the law or do it for monetary gain. She stated that they were quite happy

with what was being projected going forward, which was that she would live in the property with two others on tenancy agreements.

2.17. The Respondent was asked what she wanted to say in mitigation in relation to her admitted failures. She stated that her intentions were not bad. She stated that when she became aware of her obligations in January 2020, she instigated protection as she was advised to do. She stated that the full deposit was returned immediately without quibble. She did not raise the issue of the unpaid utility bill. She had no experience as a landlord. She did not get any advice before she became a landlord. She followed online information on "Open Rent" and they advised on their website that landlord should do tenant referencing, gas and electrical safety checks, they helped with viewings and photo inventories. She stated that she had got all of the safety checks done. She did not do an inventory. She stated that she naively trusted that the tenants would respect the property. She left furnishings, paintings, everything in the house. She advertised the three separate bedrooms as tenancies. She had about 20 applications in the first day. She stated that it is a beautiful house. She stated that she did not appoint Open Rent or anyone else as a letting agent. She asked that the tribunal consider making an award less than the maximum.

2.18. Applicant's submissions

2.19. The Applicant stated that she was looking for an award of three times the deposit.

2.20. She stated that she had gone back through the Respondent's written response and made some notes. She submitted that in relation to the deposit scheme claims it is very much a cut and dried process. Is it in line with the legal side of things and is there a substantial or significant reason why the procedure has not been followed. She thought that the matter might be complicated by the overlap with the other case. The two points that she wanted to highlight were that the Respondent's response says that she submitted the request into the deposit scheme 5 and a half month's later, whereas it looks like it was actually issued the day before a 6 month tenancy was due to come to an end. In relation to what prompted the Respondent to put the application in process she stated that she questioned the Respondent's suggestion that she spontaneously looked into her obligations. She stated that she would argue that the Respondent was prompted to look into these things by the Applicant raising the things that had gone wrong. She stated that she has substantial concerns that the reason for lodging the deposit in the way that it was done was something to do with the transition from HMO to non-HMO, to make it seem smoother. Regarding the utility bill, she stated that she had made it very

clear in her notice letter that £100pcm would be included in the rent. Shelter and a solicitor advised her not to pay the final bill. If there was any remaining money in that bill, she wanted to know whether that money would be carried over. They advised her not to pay it. She sought advice from a solicitor at the time of the notice letter. Because of covid my appointment was cancelled. She is hoping that she will still get advice. She sought guidance as to what would happen during the process when she submitted the application. She confirmed that she does not need any advice before this case can be progressed. She stated that she had provided a reason in relation to the last utility bill. If, upon receiving advice, the solicitor says it is legitimate, the bill will be paid. She confirmed that that issue does not have any bearing on this case.

- 2.21. She stated that she does not think that it is mitigatory that the deposit was lodged at the time and in the way that it was done. It was lodged as an eviction notice was being served. She stated that she suspects that it was a knee jerk reaction to the bigger picture. In terms of the deposit scheme as it is, she submits that mitigating factors have been discussed this morning.

2.22. Respondent's Response

- 2.23. The Respondent stated that she is quite concerned that there have been inferences to some overt operation on the go. She stated that that is not the case. She stated that she is trying to understand what the Applicant meant by trying to cover up the HMO, noting that that is contrary to the actions she took. If she had been trying to cover up she would have lodged three deposits. She stated that there was actually no benefit or advantage to her personally as to having it in one account as opposed to three accounts. She just followed the advice that she was given. With regard to the deposit, she stated that it is interesting that in correspondence between herself and the Applicant in November 2019, where I referred to her deposit being in a separate bank account she did not raise the issue. She accepted, in response to a question from the chair, that she had not at that time provided any prescribed information to the Applicant about deposit protection and the Applicant may have been unaware of the landlord's obligations in relation to tenancy deposits. She stated that the regulation 42 information was given to the Applicant; that was hand delivered to the Property on 29 January 2020. She stated that all of this came to a head in January 2020 when this was all announced as being an issue. She stated that she was not deliberately trying to be shady. She stated that she is relying on the text messages lodged to show that in her naivety she did not know about deposit protection at the time.

- 2.24. She stated that it was not lodged as a knee jerk reaction. She stated that it was actually done on 21 January 2020 when she first contacted Shelter,

because the Applicant was having issues with another tenant and wanted a lock put on the bedroom there. She stated that she then contacted SAL, got advice and arranged to lodge the deposit after that.

3. Findings in Fact

- 3.1. The Applicant and the Respondent entered into a tenancy for the Property which started on 30 July 2019.
- 3.2. The Applicant paid a £200.00 deposit to the Respondent on or about 23 July 2019.
- 3.3. The tenancy ended on 29 February 2020.
- 3.4. The Application to the tribunal was made on 31 January 2020, within three months of the end of the tenancy.
- 3.5. The deposit should have been lodged with a deposit protection company within 30 working days of the start of the tenancy on 30 July 2019.
- 3.6. The prescribed information in terms of Regulation 42 of the 2011 Regulations should have been provided by the Respondent to the Applicant within 30 working days of the start of the tenancy.
- 3.7. The Respondent lodged the Applicant's deposit with a Safe Deposits Scotland, a tenancy deposit protection scheme on 31 January 2020, in that the Applicant's deposit was combined with those of two other tenants of the Respondent who had separate tenancy agreements from the Applicant and another individual was named as the lead tenant for the full amount of their three deposits which totalled £600.00.
- 3.8. After the tenancy ended the Respondent arranged for release of £200.00 from the deposit monies held in the name of the Applicant and two other individuals, to be repaid to the Applicant.
- 3.9. The Respondent did not lodge the deposit in the prescribed timescale because she was unaware of her duties as a landlord in terms of the 2011 Regulations.
- 3.10. The Respondent did not provide the prescribed information in terms of Regulation 42 within the prescribed timescale because she was unaware of her obligation to do so.

- 3.11. The Property is the Respondent's only rental property in Scotland and she has three tenancies in the Property.

4. Discussion

- 4.1. The tribunal took account of the Applicants' written and oral submissions; and the Respondents' written and oral submissions.
- 4.2. In particular the tribunal had regard to the fact that the Applicant's deposit was unprotected for almost six months, when it should have been lodged within 30 working days of the start of the tenancy on 30 July 2019. The Respondent cited naivety and a lack of awareness of her obligations as the reasons for her failure to lodge the deposit. The tribunal took account of the Respondent's submissions in mitigation, including the fact that the deposit had been protected on or about 31 January 2020 (albeit it had been combined with the deposits of two other individuals who were on separate tenancy agreements from the Applicant); and the fact that the Applicant's deposit was repaid to her in full after release was authorised by the Respondent. It is not known what would have happened had the Applicant wished to use the scheme's dispute mechanism, given the way in which the deposit had been lodged.
- 4.3. For the reasons outlined, the tribunal decided to make an order for payment by the Respondent to the Applicant of the sum of £500.00 which is two and a half times the amount of the deposit. That sum was considered to be reasonable in all of the circumstances.
- 4.4. The tribunal chair informed the parties that the Payment Order could be enforced by the Applicant against the Respondent after the expiry of the permission to appeal period.

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.

S. Tanner

10 August 2020

Ms. Susanne L M Tanner Q.C.
Legal Member/Chair