



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/19/0472

Re: Property at Flat 2/1, 38 Aberdour Street, Glasgow, Lanarkshire, G31 3NJ (“the Property”)

The Parties:

Miss Amelie Coulard, 38 Guthrie Court, Auchterarder, Perthshire, PH31 1SD (“the Applicant”)

Mr Adam Piaskowski, Brohusgade 2A, 2 16, 900 Aalborg, Denmark (“the Respondent”)

Tribunal Member:

Susanne L. M. Tanner Q.C. (Legal Member)

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 POUNDS (£500.00) STERLING

1. Procedural background

1.1. On 13 February 2019, the Applicant made an application (“the Application”) to the tribunal.

1.2. The following documents were attached to the Application:

1.2.1. A copy of a Tenancy Agreement dated 18 January 2018 between the Applicant and the Respondent in respect of a tenancy of the Property;

- 1.2.2. A copy of a Tenancy Agreement (undated) between the Applicant and the respondent and another (Alexandre Poyet);
 - 1.2.3. Copy text message correspondence between the Applicant and "Landlord".
 - 1.3. Further information was requested by the tribunal and supplied by the Applicant.
 - 1.4. On 10 April 2019, the Application was accepted for determination by the tribunal.
 - 1.5. By letter of 10 May 2019, the tribunal notified the parties that the Application had been referred to the tribunal and that a Case Management Discussion had been fixed for 13 June 2019 at 1400h at Glasgow Tribunals Centre, 20 York Street, Glasgow. Parties were advised that the tribunal may do anything at a Case Management Discussion which it may do at a hearing, including making a decision on the application. Parties were advised that if they do not attend the Case Management Discussion, this will not stop a decision or order being made by the tribunal if the tribunal considers 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 he wished by 10 May 2019.
 - 1.6. Service on the Respondent of the Application documentation and notice of the CMD was successful.
 - 1.7. The Respondent submitted written representations and also requested to participate in the CMD on 13 June 2019 by Case conference call. The request was accepted.
- 2. CMD – 13 June 2019 at 1400h at Glasgow Tribunals Centre, Room 111, 20 York Street, Glasgow (Respondent by case conference call)**
 - 2.1. The Applicant attended with her boyfriend, Alexandre Poyet as her supporter.
 - 2.2. The Respondent attended by Case Conference Call with his girlfriend, Laima Lietinyte, as a supporter.
 - 2.3. The Respondent admitted that a deposit of £750 was paid by the Applicant and that the deposit has not been lodged in a deposit protection scheme at any time. He explained that that is still the case as he was not sure what to do so he decided to wait until the meeting today. The deposit is still secure in his personal bank account at Bank of Scotland and is fully available.
 - 2.4. The first notice he had that the deposit had not been lodged in a scheme was when he received the material that from the tribunal when the documents were served a couple of days after 10 May 2019.

- 2.5. The Respondent stated that this is the only property that he lets to tenants. He is studying in Denmark. He is renting it out to pay the mortgage. The Applicant is the second tenant. He had one tenant before that for 5 months on a short lease. It was exactly the same agreement as the ones lodged with the Application. He got the agreement from the internet and he amended it with an Appendix adding a Schedule of appliances and furniture. He did not receive any advice prior to drafting the tenancy agreement. The start date was 1 February 2018.
- 2.6. When asked by the tribunal chair what kind of tenancy it was supposed to be, given that it was entered into after the coming into force of the Private Housing (Tenancies)(Scotland) Act 2016, the Respondent stated that he has not heard of a Private Residential Tenancy agreement and thought that he was entering into a Short Assured Tenancy agreement. He said that there is a tenant in the property at the moment on the same sort of tenancy agreement. The Deposit for the current tenant is placed in Safe Deposits Scotland.
- 2.7. The Respondent stated that his reason for not lodging the deposit was that he was not aware that it was mandatory to lodge deposits in a scheme. He has not lived in Scotland his entire life. He stated that the Applicant asked at the beginning of the tenancy where it would be held and that after that there were no further concerns from the Applicant. The Respondent assumed that it was fine that he held it in his private account.
- 2.8. The Respondent admits that it has not been lodged since it was paid to him and that remains the position. There is a receipt for payment. It was paid in two parts and the email receipt is dated 19 January 2018. He stated that that was the second contract. The first contract was until 31 July 2018 and the second one commenced on 1 August 2018. He carried forward the same deposit for the second tenancy, which was in joint names of the Applicant and her partner.
- 2.9. The Applicant stated that she paid the entire deposit at the start of the first tenancy agreement. She stated that at that time she was unaware that deposits had to be lodged in a protection scheme when she entered into the tenancy because this was her first tenancy in Scotland. she is French and in France a Landlord can keep a deposit in their personal account.
- 2.10. The Applicant confirmed that 31 January 2019 was the moving out date.
- 2.11. The tribunal chair asked the Respondent if he had any submissions to make relative to the sum for the payment order. He stated that he was aware that the tribunal could order him to pay a sum up to three times the deposit amount. He invited the tribunal to consider the lower end. In support, he submitted that he is not a commercial landlord. This is the only property he lets out. He had one tenant prior to the Applicant on the same conditions and the deposit was not lodged but was returned (minus an agreed £50 for cleaning). The current tenant's deposit is lodged in the deposit scheme. The intermediate tenant after the Applicant has received the full deposit as well. He did not received any advice about tenancies prior to entering into the first tenancy or that with the Applicant.

- 2.12. The Respondent accepted that the Applicant has been deprived of her right to resolution through the deposit scheme and stated that he could lodge it if that is the outcome of the tribunal. He stated that he is waiting for instructions from the tribunal as this is already an expired tenancy. He has not had any discussions with Deposits Scotland about whether it can be lodged now and the deposit progressed in that way. The Respondent apologised to the Applicant and the tribunal for his failure to lodge the deposit.
- 2.13. The Applicant stated that she would simply like their deposit back and in full (in terms of their civil claim) and they have no submissions to make about the appropriate payment order for this Application.

3. Findings in Fact

- 3.1. The Applicant and the Respondent entered into a tenancy agreement dated 18 January 2018 for the period 1 February 2018 to 31 July 2018.
- 3.2. The Applicant and the Respondent and another joint tenant entered into a tenancy agreement for the period 1 August 2018 to 31 January 2019.
- 3.3. The Application to the tribunal was made on 13 February 2019 which was within three months of the end of the tenancy.
- 3.4. The Applicant paid a deposit of £750.00 on or about 19 January 2018 in respect of the first tenancy and it was retained by the Respondent in respect of the deposit due for the second tenancy.
- 3.5. The deposit should have been lodged with a deposit protection company within 30 working days of 1 February 2018 and the Applicant should have been provided by the Respondent with the prescribed information in respect of deposit protection.
- 3.6. The Respondent did not lodge the Applicant's deposit with any of the deposit protection schemes in Scotland at any time.
- 3.7. The Applicant has not received her deposit back from the Respondent following the end of the tenancy, despite repeated requests for the same.
- 3.8. This is the only property let by the Respondent.
- 3.9. The deposit is held in the Respondent's personal bank account.
- 3.10. The Respondent has apologised to the Applicant for his failure to lodge the deposit.

4. Discussion

- 4.1. The tribunal took account of the Applicants' written and oral submissions; and documentary evidence.
- 4.2. The Respondent admitted his failure to lodge the tenancy deposit and apologised for the failure.
- 4.3. In considering the appropriate level of payment order, the tribunal had regard to the fact that the deposit was unprotected for the period of around a year, when it should have been lodged within 30 working days of the start of the tenancy. The tribunal took account of the fact that the Landlord only owned and this Property and that the Applicant was his second tenant following another short let. The tribunal took account of the fact that the Respondent had not received any advice in relation to the tenancy and that he was unaware of the Scottish statutory requirement to lodge a deposit. The Respondent should have been aware of his obligations to lodge the Applicant's deposit with a deposit protection scheme. The Applicant has lost the opportunity to claim her deposit back via a deposit protection scheme or to challenge any proposed deductions, which is one of the purposes of the schemes. The Applicant has not received return of her deposit from the Respondent. However, the Respondent has engaged with the tribunal process and offered to lodge the deposit in a scheme to enable resolution of the proposed deductions for damage and cleaning charges.
- 4.4. For the reasons outlined, the tribunal decided to make an order for payment by the Respondent to the Applicants of £500.00.
- 4.5. The Respondent indicated that he accepted that penalty and agreed that it was his fault. He requested that the Applicant provide bank account details for payment and the Applicant agreed to email the Respondent to provide her details.
- 4.6. The tribunal chair informed the parties that the Payment order could be enforced by the Applicants 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.

Susanne L M Tanner

13 June 2019

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