



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit
Schemes (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/20/0713

Re: Property at Flat 1, 10 Hawkhill Close, Edinburgh, EH7 6FG (“the Property”)

Parties:

Mr Aslan Shikhaliyev, C/O Dunard, 3 Waggon Road, Brightons, FK2 0EL (“the Applicant”)

Magdalena Anita Razzaq, Bruss Property, whose present whereabouts are unknown (“the First Respondent”)

Parveen Akhtar, 85 Milton Road West, Edinburgh (“the Second Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondents)

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

Background

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 103 and Rule 111 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for payment for failure to lodge a tenancy deposit into an approved scheme.
2. The application contained,
 - (a) a copy of the tenancy agreement.
 - (b) evidence of the payment of the deposit.

- (c) evidence that the deposit had not been placed in any approved schemes.
 - (d) copies of Facebook pages.
 - (e) title deeds of the owner of the property.
3. The Applicant attended the case management discussion by telephone conference with a supporter, Mr Murgatroyd. There was no appearance by either respondent.
 4. Service of the application on the First Respondent had been by advertisement. Following on from an earlier case management discussion the application had been amended with a second respondent being brought as a further party to the application. The Second Respondent was the owner of the property. Service on the Second Respondent had taken place by sheriff officers. As I was satisfied that service of the application had been made on both respondents, I was content to proceed with today's case management discussion.

The Case Management Discussion

5. The Applicant advised that the tenancy commenced on 12 October 2019, and it had ended on 17 October 2020. He advised that he had paid £300 deposit just after he had taken entry. He referred to the evidence of payment of the deposit. He had lodged a copy of the tenancy agreement. There is a reference to the deposit of £300 in the agreement.
6. When the applicant ended the tenancy, the First Respondent had agreed to meet him on 16 January at the flat to conclude tenancy arrangements and repay his deposit. However, the First Respondent contacted him to say she could not attend that day, rearranged the meeting for the following day and charged him £100 for one further night's stay at the property.
7. The First Respondent had attended the property on 17 January. The First Respondent had originally indicated that she would repay the deposit, however, did not have the money on her. The Applicant said that he contacted the First Respondent on a number of occasions during that day, to try and organise the return of the deposit. However over the course of the day, the First Respondent, advised that she would not be repaying the deposit money, she indicated that the Applicant had left a number of bills to pay including TV licence and therefore the deposit money would be used to pay for these bills. The Applicant asked the First Respondent to provide details of what these sums were, however the First Respondent failed to provide any evidence of these bills. The Applicant advised that he was not, in any event liable for these costs in terms of the lease agreement. He therefore disputed what the First Respondent said.
8. Thereafter the Applicant attempted to make contact with the First Respondent to recover his deposit, however the First Respondent failed to respond to any of his further attempts at contact. The First Respondent was not responding to any contact by social media, emails, or telephone.
9. The Applicant advised that he had attempted to find an address for the First Respondent however it had only been through social media. He advised that he

had contacted Edinburgh City Council to try and find the First Respondent through landlord registration however, there had been no record of any landlord registered at that property. He advised that there was another tenant in the property, he did not know the details of his tenancy.

10. The Applicant advised that he had dealt with the First Respondent during the tenancy. The First Respondent had advised him that she was the owner of the property. The title deeds for the property appeared to the owner of the property to be Parveen Akhtar, however the Second Respondent.
11. The Applicant advised that he contacted the various approved tenancy deposit schemes however, none had any record of his deposit being lodged with them.
12. The Applicant was therefore seeking an order for payment in relation to the breach of the tenancy deposit regulations as the landlord had failed to submit the deposit of £300 to an approved scheme; and had failed to return the deposit at the end of the period of the tenancy.

Findings in Fact and Law

13. The tribunal made the following findings in fact and law: -
 - (a) That a tenancy had commenced on 12 October 2019.
 - (b) The First Respondent was the agent for the Second Respondent.
 - (c) The Second Respondent was the landlord for the property.
 - (d) The Applicant was the tenant.
 - (e) That the Applicant had paid the First Respondent a tenancy deposit of £300 on 15 October 2019.
 - (f) That the tenancy has ended on 17 January 2020.
 - (g) That the tenancy deposit was not lodged with an approved scheme.
 - (h) The tenancy deposit was not repaid to the Applicant.
 - (i) That the tenancy deposit was not lodged with an approved scheme within 30 working days of the tenancy beginning.
 - (j) That the Respondent had not provided the Applicant with information about the tenancy deposit, as required to do so under regulation 42 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Reasons for Decision

14. The Tenancy Deposit Schemes (Scotland) Regulations 2011 set out a number of legal requirements in relation to the holding of deposits, and relevant to this case are the following regulations: -
 - 3.— (1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—
 - (a) pay the deposit to the scheme administrator of an approved scheme; ...
...
15. Regulation 9 provides that a tenant who has paid a tenancy deposit may apply to the first-tier tribunal for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.
16. Regulation 10 provides that if satisfied that the landlord did not comply with any duty in regulation 3 then the first tier tribunal — must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and may, as it considers appropriate in the circumstances of the application, order the landlord to— (i) pay the tenancy deposit to an approved scheme; or (ii) provide the tenant with the information required under regulation 42.
17. Neither Respondent appeared today. They did not submit any written or verbal representations about what happened to the deposit; why it was not lodged with an approved scheme and why they had not supplied information to the Applicant about his deposit.
18. The Second Respondent did not appear to explain the basis of his legal relationship with the First Respondent and therefore the Applicant.
19. The First Respondent had told the Applicant that she owned the property and appeared therefore to have held herself out as an agent for an undisclosed principal, the Second Respondent.
20. I considered that a private residential tenancy had been created between the Applicant and the Second Respondent, given that on the face of the papers before me, the Second Respondent was the only person who appeared to be entitled to grant a lease for the property. The First Respondent appeared to have been acting as an agent for her.
21. A deposit has been paid by the Applicant; the deposit was not secured in an approved scheme; it has not been repaid to the Applicant. I consider therefore that the terms of Regulation 10 are engaged, and I must order that the Respondent pay the Applicant an amount not exceeding three times the amount of the tenancy deposit. The amount to be paid requires to be determined according to the circumstances of the case, the more serious the breach of the regulations the greater the penalty.

22. In this case, I consider that a sum of 3 times the value of the deposit would be appropriate, namely £900. This is the maximum I can award.
23. There has been a breach of the regulations. I consider that it has been a serious breach. The penalty should reflect this.
24. In considering what penalty to impose, I have had regard to the written and verbal submissions by the Applicant.
25. I consider that it is a serious matter to fail to lodge a tenancy deposit in accordance with the regulations. The tenancy agreement refers to a deposit being taken. It was not secured during the whole currency of the lease. It appears when the Applicant tried to get it repaid, that the Respondents had no intention whatsoever to repay the deposit to the Applicant. Even if there were any merit in the reasons why it was not repaid to the Applicant, (and I make no comment on this,) the Applicant was not provided with any information to support the Respondent's reason for not re-paying it, and importantly he was not provided with the right to seek an independent adjudicator to determine the matter.
26. It is also of concern that the First Respondent has refused to engage whatsoever with the Applicant about this matter. She also appears to have held herself out as the owner. The application has been served on the Second Respondent as the owner of the subjects, he is aware of today's application if he had a defence to this case, he could have submitted representations or attended the case management discussion and explained his position. He has failed to do so. I consider that the Second Respondent was the only party who had the right to grant the tenancy and he is therefore the landlord for the purposes of this application.
27. I do not know if either Respondent were aware of the requirement to lodge the deposit. The First Respondent's social media page states that she runs a property management company and therefore I would assume that she should have been aware of her professional responsibilities. Their failure to attend today's case management discussion would appear to support the view that they do not take their legal responsibilities seriously in relation to this matter.
28. It appears that the Applicant had been involved in a fruitless attempt to recover his tenancy deposit.
29. I consider that the failure to provide an address where contact can be made to the landlord or his agent made the Applicant's opportunity to obtain legal redress more difficult.
30. The Respondents also never provided the Applicant with the information about the tenancy deposit. I consider that they have acted with a reckless disregard for the regulations.
31. While the tenancy was not in existence for a long time, in this case I do not think that this provides any mitigation, as it does not appear that the deposit would have been secured or repaid at any time.

32. Orders in these cases impose a sanction on a landlord to try and address a mischief. I consider in this case there has been a blatant disregard for the tenancy deposit regulations. For all the reasons set out above, I consider that the matter is serious, and I believe that a sanction of 3 times the deposit would be appropriate in this case.

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.

Melanie Barbour

20/10/20

Legal Member/Chair

Date