

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 (“the Regulations”)

Chamber Ref: FTS/HPC/PR/21/0728

Re: Property at 24/3, Potterrow, Edinburgh, EH8 9BL (“the Property”)

Parties:

Miss Nika Teran, 139/9, Buccleuch Street, Edinburgh, EH8 9NE (“the Applicant”)

Sydyk Ltd, 7 Pauls Terrace, Truro, TR1 1HD (“the Respondent”)

Tribunal Members:

**Steven Quither (Legal Member)
Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent failed to comply with their duty under Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 but made no further order since the application to the Tribunal was made outwith the prescribed time-limit.

1. BACKGROUND

The Applicant and others were tenants and the Respondents, nominally on behalf of Leo Zawadzki, the landlord under a Private Residential Tenancy Agreement of the Property commencing 1 September 2020 and which came to an end on 20 December 2020 by virtue of expiry of a Notice to Leave dated 26 November, sent by the Applicant to the Respondents. On or about 6 August 2020, in contemplation of the tenancy, the Applicant paid a deposit of £1790. It is conceded by the Respondents/Mr Zawadzki that they failed to place the deposit in an approved scheme in accordance with the obligation to do so under Regulation 3 of the 2011 Regulations until 19 November 2020, duly receipted by SafeDeposits Scotland on 23 November 2020, about 4 weeks before the tenancy came to an end and about 5 weeks after the 30 working day period from the beginning of the tenancy within which the deposit should have been paid into such a scheme, which period expired on or about 13 October 2020, in the Tribunal’s calculation. This application was made on 22 March 2021 by the Applicant by e-mail.

2. THE CASE MANAGEMENT DISCUSSION

A Case Management Discussion ("CMD") took place by telephone conference on 14 May 2021. Accompanying the Applicant was Izabella Skowronska, another tenant under the Agreement, and a Maximilien Urtz while Leo Zawadzki was accompanied by a Toni Zawadzki for the Respondents.

There were no issues raised as to the chronology as outlined in the preceding paragraph, which was clear from documentation helpfully lodged before the CMD.

So far as the Applicant was concerned, she very fairly stated that she was simply seeking an appropriate sanction for breach of the Respondents' obligation to lodge the deposit within an approved scheme within the prescribed period. When I reverted to her after I had heard from Mr Zawadzki to seek clarification about the timing of the application, given Mr Zawadzki's position that the application had been lodged too late to be considered, she advised that while she conceded the terms of the Notice to Leave, indicating an intention to leave the Property on 20 December 2020 and also that she in fact returned the keys of the property on 19 December, nonetheless, the 28 day period referred to in the Notice to Leave did not expire till 24 December and, in any event, rent had been paid for the full month of December, until 31st December. Accordingly, based on either of these dates, the application, made on 22 March 2021, had been lodged within the 3 month time limit for doing so. She understood that Mr Zawadzki had a new tenant who had moved into the property before the end of December (which Mr Zawadzki did not concede).

Mr Zawadzki advised in response to questioning by the Tribunal that he did not deliberately fail to pay the deposit into an approved scheme, rather that he failed to do so either by oversight or lack of knowledge about his obligation to do so. While he now had this and another flat he was letting out, this was the first time he had dealt with a tenancy himself and, by virtue of these proceedings, he was now fully aware of his obligations regarding deposits. He maintained that since the tenancy had come to an end on, at latest, 20 December 2020, the application was lodged out of time on 22 March 2021. He had been paid rent in full for December 2020 and had not been asked for any refund of rent for the period after the keys were returned, a figure which the Tribunal calculated as £692 or so ($12/31 \times £1790$).

It was not in dispute that the deposit had been returned, in full, on or soon after 14 March 2021.

3. FINDINGS IN FACT

The Applicant and others were tenants and the Respondents the landlord under a Private Residential Tenancy Agreement which commenced on 1 September 2020 and in respect of which the Applicant and others paid a deposit of £1790 on or about 6 August 2020, in contemplation of the tenancy. The Respondents/Mr Zawadzki failed to place the deposit in an approved scheme in accordance with the obligation to do so under Regulation 3 of the Regulations until 19 November 2020, duly receipted by SafeDeposits Scotland on 23 November 2020, ie about 4 weeks before the tenancy came to an end and about 5 weeks after the 30

working day period from the beginning of the tenancy within which the deposit should have been paid into such a scheme, which period expired on or about 13 October 2020, in the Tribunal's calculation. During this time the deposit was not protected. This was due to lack of knowledge or oversight by Mr Zawadzki as to his obligations in relation to the deposit, rather than wilful non-compliance, obligations of which he is now only too aware.

However, the tenancy of the Property came to an end at the latest on 20 December 2020, if not prior to that on 19 December when the keys were returned and occupancy given up, by virtue of expiry of a Notice to Leave dated 26 November, sent by the Applicant to the Respondents. These proceedings commenced on 22 March 2021 by virtue of an application lodged by the Applicant by e-mail, which date is outwith the 3 month limit for applications such as this.

4. REASONS FOR DECISION

As indicated in the preceding paragraph, the Tribunal found that the proceedings had not been lodged within the time limit of 3 months to do so. Accordingly, notwithstanding the breach by the Respondents in relation to the deposit, fairly and candidly conceded by Mr Zawadzki, no award can be made. It is a matter for the parties whether any further action is taken in relation to the rent paid for the period from 19 to 31 December 2020, after the Applicant vacated the Property, whether by payment to the Applicant on a voluntary basis or otherwise.

For the avoidance of doubt, it is clear that the so-called "amateur landlord" is not exempt from compliance with deposit obligations through "inexperience or naivete" (Jenson v Fappiano 2015 SC EDIN 6) and it is to be hoped that Mr Zawadzki will take better care as to deposits in any future tenancy enterprises he undertakes. It is in his own interests to do so, given that if this application had been lodged in time he could have been facing a penalty of up to £5370.

However, since it was lodged late, the question of an appropriate penalty did not arise.

In all of these circumstances, while the Tribunal finds the Respondents/Mr Zawadzki did not comply with his deposit obligations, it can make no order in view of the application not being lodged within the prescribed time limit.

5. DECISION

To REFUSE the application, on account of it being lodged outwith the prescribed time limit of 3 months prescribed in Regulation 9(2) of the Regulations, the tenancy having ended on 19 or 20 December 2020 and the application not having been lodged until 22 March 2021.

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.

SR QUITHER

14 MAY 2021

Legal Member/Chair

Date