



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/21/1238

Re: Property at 11/6 Viewcraig Gardens, Edinburgh, EH8 9UL (“the Property”)

Parties:

Miss Viktoria Konstantinova, 11/6 Viewcraig Gardens, Edinburgh, EH8 9UL (“the Applicant”)

Mr Mark Lennie, 15 Park Crescent, Loanhead, EH20 9BQ (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member)

Decision (in absence of both parties).

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) being satisfied that the Respondent as landlord of the property at 11/6 Viewcraig Gardens Edinburgh EH8 9UL (“the Property”) did not comply with a duty in Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011, makes an order for the Respondent to pay to the Applicant the sum of two hundred and twenty five pounds (£225).

1. This was a case management discussion ‘CMD’ in connection with an application in terms of Rule 103 of the First-tier Tribunal for Scotland (Procedure) Regulations 2017 ‘the rules’ for an order for a penalty in terms of Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011, (‘the regulations’). The application was made by Miss Viktoria Konstantinova on 12 May 2021. The applicant did not attend the CMD. The applicant emailed the tribunal chamber on 12 August 2021 and stated the following:

My work rota has been changed and apparently I need to work on the 13th and I can’t make it for the video call. I am really sorry to tell you this in the last minute.

The evidence he is asking the other girls for has nothing to do with all of the violations he has done- registering one's deposit does not have anything to do with whether the flat mates get along well or not. My deposit has been registered now but I cannot deny that this was only done after 6 months of tenancy and only after I made a complaint against him.

Because of all the violations this landlord has done I am leaving the fault this month and I have given my notice for this reason. is it possible to cancel the call?

Even though I am leaving this flat and I don't see a reason to have a conference call it is still worth mentioning that he needs to follow the laws for all future tenancies regarding deposits, notice for entry, legal contracts etc.

2. The respondent attended the CMD. The respondent had contacted the tribunal chamber on 5 August 2021 requesting that the CMD be rescheduled. The respondent stated:

I am awaiting email evidence back from the complainants flatmates who lived with her at the time as evidence regarding some of her allegations against myself'.

The request for an adjournment was refused by the legal member on the basis that the only matter before the tribunal was an application under rule 103. Whether the deposit had been lodged was a matter of fact to be determined and any need for an adjournment could be dealt with at the CMD.

Preliminary matter

3. The respondent indicated to the tribunal clerk that his phone would automatically make a recording of the CMD and that this could not be disabled. The legal member addressed this as a preliminary matter. The respondent stated that he had an app on his phone for business purposes which meant that a recording of all outgoing and incoming calls was made automatically. The legal member advised the respondent that if this was the case and he wishes to participate in the CMD, he would require to dial in with a different telephone. The respondent stated he did not have another device available. The respondent therefore left the call.
4. The tribunal considered how to proceed. The applicant was unable to attend the CMD. It appears from her that she erroneously believed that as she was moving out of the property, her application was no longer appropriate. It however appeared that the applicant had a valid claim. The tribunal had intended to deal with the application in the applicant's absence after receiving her email. The respondent had however effectively excluded himself from the process by refusing to participate in accordance with rule 35. The tribunal decided that in accordance with the overriding objective the fairest way to proceed was to determine the application in the absence of both parties.

5. The tribunal had before it the following copy documents: -

- (1) Application dated 12 May 2021.
- (2) Tenancy agreement dated 26 December 2020.
- (3) Respondent's email dated 5 August 2021.
- (4) Applicant's email dated 12 August 2021.

6. The applicant had made reference in her application to a number of matters which did not appear to have any relevance to the tenancy deposit application. The tribunal chamber wrote to the applicant on 10 June 2021 and identified that if she wishes to pursue any other matters, she should seek advice and make the corresponding applications to the tribunal. Similarly, in his email of the 5 August 2021 the respondent raises matters not relevant to the application. The respondent does not deny that this is the case, indeed he does not mention the deposit at all. Looking at all of the information before the tribunal, it appears that the applicant had paid a deposit of £150 in December 2020. This should have been lodged within 30 working days of the start of the tenancy. According to the applicant, this had been left unprotected for around 6 months until after this application was made.

7. Findings in fact

- The respondent is the owner of the property.
- The applicant rented the property from the respondent from 8 January 2021 until present.
- The applicant paid a deposit of £150.
- The deposit was not lodged into an approved scheme within 30 working days of 8 January 2021.
- The deposit was lodged around 6 months late.

Reasons

8. The tribunal was satisfied that it had sufficient information before it to make a decision and the procedure had been fair. The tribunal decided that on the balance of probability, this was a breach of the regulations as the respondent's failed to lodge the deposit into a scheme within 30 working days.

9. The tribunal reviewed all of the recent cases regarding tenancy deposit schemes and noted that in the case of Kirk-v-Singh 2015 SLT (Sh Ct) 111 sheriff Jamieson was mindful of the need to:-

proceed to impose a sanction which is "fair, proportionate and just having regard to the seriousness of the noncompliance.

10. The tribunal decided this was neither a minor breach nor the most serious breach. It does not appear to be wilful however the respondent operates the business 'Glenvarloch Student Properties Ltd and he has the logo of the Scottish Association of Landlords on his business correspondence. He should therefore be aware of his obligations in terms of the regulations. The maximum penalty is £450. The tribunal decided a penalty of £225 was fair proportionate and just in all of the circumstances.

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.

L. W

13 August 2021

Lesley A Ward Legal Member

Date