



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

Chamber Ref: FTS/HPC/PR/19/1365

Re: Property at 1 Oswald Street, Falkirk, FK1 1QJ (“the Property”)

Parties:

Mr Zenon Sept, 2 Lower Granton Road, Edinburgh, EH5 3RX (“the Applicant”)

Mr David Shedden, 35 Main Street, Blackridge, Bathgate, West Lothian, EH48 3RJ (“the Respondent”)

Tribunal Members:

Alastair Houston (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of £1075.50 should be made in favour of the Applicant.

1. Background

- 1.1 This is an application under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) that being an application alleging a breach of the statutory duties under the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”) in respect of a tenancy deposit. The application sought repayment of the deposit together with sum of up to £1275, being three times the deposit.
- 1.2 The application was accompanied by a copy of the written tenancy agreement between the parties, evidence of rent and council tax paid by the Applicant, and a letter sent by the Applicant to the Respondent dated 23 April 2019. Following a request for further information from the Respondent, the Applicant had also supplied written submissions and emails to and from the approved schemes confirming no deposit was

lodged in connection with the Property. The Respondent had lodged written submissions.

2. The Case Management Discussion

- 2.1 The Case Management Discussion took place on 2 July 2019. The Applicant was personally present and accompanied by his partner, Eszter Megyesi. The Respondent was neither present nor represented. The written submissions lodged by him confirmed he was travelling to Bulgaria in advance of the Case Management Discussion and would not be attending.
- 2.2 The Applicant confirmed that he wished to proceed with the application. The Tribunal did not consider the written submissions lodged by the Respondent to amount to a request for a postponement of the hearing. There was no information from the Respondent as to when he would be returning from Bulgaria, if at all. Further, the Tribunal considered that the Respondent had been given notice of the Case Management Discussion in terms of the Rules and elected to proceed in the Respondent's absence.
- 2.3 The Tribunal advised the Applicant that the present application did not allow the Tribunal to make an order for repayment of the deposit, only whether an amount should be awarded under the 2011 Regulations. The Applicant accepted this and the Tribunal proceeded to hear from him. The Applicant advised that the tenancy agreement between the parties commenced on 22 January 2019. It was a joint tenancy with Ms Megyesi. A deposit of £425.00, referred to as a security bond in the written agreement, was paid on the same day.
- 2.4 The Applicant advised he did not receive any notification that the deposit had been lodged with any scheme. He and his partner gave notice to end the tenancy on 22 April 2019. They left the property on 16 April 2019, and arranged a walk through, being an inspection, with the Respondent for 21 April 2019. The Property had been provided for the exclusive use of the Applicant and his partner. The Respondent was not a family member.
- 2.5 They attended the Property in advance of this to clean it. The Applicant found the locks had been changed and the Respondent did not turn up for the arranged inspection. The Applicant only managed to contact the Respondent around 24 hours later. The Respondent told the Applicant that he had broken the lease by moving out prior to the expiry of a six month term. The Respondent alleged the Applicant had removed bedding from the Property. The Applicant advised that bedding had been taken to his new accommodation to be washed and returned to the Property.
- 2.6 The Applicant advised that the Respondent told him that only a portion of the deposit was to be returned. Deductions were to be made in respect of a sum of £50.00 that had been repaid to the Applicant from the first month's rent to allow some furnishing to be purchased by the Applicant for

the Property. The cost of the bedding was also to be deducted. The Applicant was not told the precise sum that would be returned.

2.7 Following service of the application on the Respondent, the Applicant advised he spoke with the Respondent. The Respondent again offered to return a portion of the deposit. The Applicant requested the full deposit and the equivalent of one week's rent due to the locks having been changed. The Applicant then agreed to simply accept the return of the full deposit which the Respondent agreed to. The Applicant requested that this was paid to him in cash or by cheque. He did not want to provide his bank details to the Respondent. As of the date of the Case Management Discussion, the deposit had not been repaid. The Applicant confirmed that the Respondent should have his new address. He submitted that the negligence on the part of the Respondent went beyond simply failing to lodge the deposit. He required to contact Falkirk Council and Citizen's Advice for assistance in making this application.

3. Findings in Fact

3.1 The parties entered into a Private Residential Tenancy agreement ("the PRT") which commenced on 22 January 2019.

3.2 A deposit of £425.00 was paid by the Applicant in connection with the PRT.

3.3 The deposit was not lodged with an approved third party scheme within 30 working days of the PRT commencing.

3.4 The Applicant was not provided with any information in connection with the lodging of the deposit.

3.5 The Respondent had offered to make payment of the full deposit following the present application being lodged.

3.6 As of 2 July 2019, the deposit had not been repaid to the Applicant due to his insistence on payment being made by cash or cheque.

4. Reasons for Decision

4.1 The Tribunal proceeded on the basis of the written representations made by the parties and the submissions made by the Applicant at the Case Management Discussion. The written tenancy agreement between the parties was not in a standard form. It made reference to a "short term tenancy" which has no legal effect. The Tribunal was of the opinion that the agreement between the parties satisfied the requirements of a Private Residential Tenancy within the meaning of Section 1 of the Private Housing (Tenancies) (Scotland) Act 2016.

4.2 Further, the agreement between the parties constituted a relevant tenancy within the meaning of Regulation 3(3) of the 2011 Regulations.

Accordingly, any deposit paid by the Applicant should have been lodged with an approved scheme within 30 working days of the commencement of the tenancy and the information prescribed by Regulation 42 of the 2011 Regulations provided to the Applicant.

- 4.3 The written response received from the Respondent contained an admission that a deposit of £425.00 had been paid by the Applicant. It contained details regarding the payment of £50.00 made to the Applicant at the commencement of the tenancy and the cost of the bedding removed by the Applicant. The Respondent confirmed that payment of the full deposit had been offered to the Applicant but that the Applicant had insisted on payment in cash.
- 4.4 The Tribunal did not believe it was necessary to fix a hearing and proceeded to make an order under Rule 17(4) and Rule 18 of the Rules. Whether or not the full deposit was due to be repaid to the Applicant is irrelevant for the purposes of the present application. The issue before the Tribunal was whether or not the 2011 Regulations applied, whether they had been breached and what, if any, sanction should be imposed. The Tribunal did not consider that the Respondent had offered much in the way of mitigation. The deposit had not been lodged and had been retained following the end of the tenancy agreement. A dispute regarding the amount to be returned had ensued – this is precisely the situation that lodging of the deposit is meant to resolve. The Applicant had been deprived of the arbitration process offered by the approved schemes and had required to make the present application.
- 4.5 The Tribunal did take into account that the Respondent had offered to return the deposit following the application being made. The Tribunal considered that the request by the Respondent to make payment via bank transfer was reasonable and the Applicant did not have grounds to withhold his bank details. In light of the offer, the Tribunal awarded two and a half times the value of the deposit, being £1062.50.

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.

Alastair Houston

Legal Member/Chair

8 July 2019

Date