

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/19/1641

Re: Property at 2/4 Renfrew Chambers, 136 Renfield Street, Glasgow, G2 3AU ("the Property")

Parties:

Miss Kirsty Johnson, Vevo, Whalsay, Shetland, ZE2 9AN ("the Applicant")

Miss Veronica Bryce, 14 Coralmount Gardens, Kirkintilloch, Glasgow, G66 3JW ("the Respondent")

Tribunal Members:

Fiona Watson (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order is granted against the Respondent(s) for payment to the Applicant in the undernoted sum:

ONE THOUSAND AND NINETY-FIVE POUNDS (£1,095) STERLING

- Background
- 1. An application was submitted to the Tribunal under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. Said application sought an order be made against the Respondent on the basis that the Respondent had failed to comply with her duties to lodge a deposit in a tenancy deposit scheme within 30 days of the start of the tenancy in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations").

- The Case Management Discussion
2. A Case Management Discussion ("CMD") took place on 19 July 2019. The CMD took place by way of conference call. The Applicant was represented by her partner, Joss Tait. The Respondent was personally present and represented herself.
 3. The Applicant sought an order from the Tribunal on the basis that the Respondent had failed to comply with her duties to lodge a deposit in a tenancy deposit scheme within 30 days of the start of the tenancy in terms of Regulation 3 of the 2011 Regulations.
 4. The Applicant's representative had been a joint tenant along with the Applicant in a lease entered into with the Respondent, which commenced 27 August 2017. A copy of the lease was lodged with the application. They paid a £730 deposit to the Respondent at the start of the lease. They vacated the Property on 20 May 2019. They were unaware that there was an obligation for landlords to place their deposit into a tenancy deposit scheme at the start of the tenancy. They became aware of this when they took advice from Shelter in early March 2019. They wished to terminate their lease early and did not bring the deposit to the landlord's attention at that stage, for fear that the landlord would not allow them to leave the lease early. The deposit not being secured in a tenancy deposit scheme caused them stress and anxiety during their university exam period.
 5. The Respondent submitted to the Tribunal that she had been unaware that she had a legal obligation to put the deposit into a tenancy deposit scheme. She had not tried to deceive the tenants to hide their deposit. The tenancy agreement clearly stated in it that the deposit would be held by her in a bank account. She made no financial gain from doing so and gained no interest on the funds held. She returned the deposit in full within 7 days of the end of the tenancy. She only became aware of the existence of the tenancy deposit scheme in April 2019 when mentioned by a relative. She immediately looked into it and discovered that she should have lodged the deposit within 30 working days of the start of the tenancy. She realised at that stage that she was now too late. When asked by the Tribunal why she didn't immediately place the deposit into a scheme at that stage anyway, she advised that she wasn't aware she could do so after the 30 day period. She admitted that she took no steps to clarify the position as to whether she could do so, however. She also advised that the tenant had indicated around then that they intended to vacate the property on 20 May 2019 therefore did not consider there to be any point lodging it in a scheme as she intended to return the full deposit anyway. She advised that there were issues at the end of the tenancy with cleanliness and damage in the property. She submitted that she had suffered financial loss, as she was unable to apply to the scheme for them to make decision on the return of the deposit to her due to the alleged cleanliness and damage issues.

6. The Respondent submitted that she had been a landlord for approximately 5 years. When asked by the Tribunal what steps she had taken to educate herself on the legal obligations of a landlord at the commencement of leasing the property to the tenant, she confirmed she had not taken any. However, upon finding out that she had failed to abide by the Regulations, she had attended a course run by Landlord Accreditation Scotland ("LAS"), and had become an accredited member of LAS and a member of the Scottish Association of Landlords. She has signed up for a further two training courses to further educate herself.
7. The parties confirmed to the Tribunal that they had made full submissions and had nothing further that they wished to add, nor did they have any further evidence nor witness evidence that could be considered at a future Hearing.

- Findings in Fact

8. The Tribunal made the following findings in fact:

- (a) The parties entered into an assured tenancy which commenced 27 August 2017;
- (b) The Applicant paid a deposit of £730 to the Respondent;
- (c) The Respondent failed to lodge the deposit of £730 into an approved tenancy deposit scheme;
- (d) The Tenancy ended on 20 May 2019;
- (e) The Deposit had been returned to the Applicant within 7 days of the termination of tenancy.

- Findings in Law

8. The Tribunal made the following findings in law:

8.1 The Respondent was in breach of her duties under Regulation 3 of the 2011 Regulations, which states as follows:

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;
and*

- (b) provide the tenant with the information required under regulation 42.*
- (2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.*
- (3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—*
- (a) in respect of which the landlord is a relevant person; and*
- (b) by virtue of which a house is occupied by an unconnected person, unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.*
- (4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.*

8.2 The Tribunal must grant an order in terms of Regulation 10 which states as follows:

10. If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—

- (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and*
- (b) may, as the sheriff 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.*

- Reasons for Decision

9. The Tribunal was satisfied that the Respondent was in breach of Regulation 3 as aforesaid. This was by the Respondent's own admission. The Tribunal was not satisfied that the circumstances surrounding the Respondent's failure to lodge the deposit were sufficiently serious to persuade it to grant an order at the maximum level allowed, being three times the amount of the deposit.

10. The 2011 Regulations were introduced to provide security for tenants in paying over deposits to landlords and to address an issue with some landlords taking tenancy deposits and then failing to pay them back where they were lawfully due at the end of the tenancy. The 2011 Regulations also provide that parties have access to an independent and impartial dispute resolution mechanism within a scheme to address any deposit deductions which require to be considered.
11. By her failure to lodge the deposit into an approved tenancy deposit scheme, the Respondent has deprived the Applicant of the opportunity firstly to have her deposit securely held, and secondly, to have access to an impartial and free arbitration system within a scheme to determine where or not any deductions should be validly made.
12. The Tribunal noted that the Respondent claimed that she had suffered financial loss as a result of having repaid the deposit in full to the tenant, rather than being able to reclaim the deposit back from the scheme. However, the claim by the Respondent that there were cleanliness and damage issues at the termination of the tenancy was disputed by the Applicant and ultimately, both parties had lost out on their ability to have this properly adjudicated by a tenancy deposit scheme adjudicator due to the Respondent's failure to lodge the funds appropriately. The Tribunal did not find it relevant or mitigating that there were alleged cleanliness or damage issues at the end of the tenancy. This was not in any way a mitigating factor to the question of the Respondent having failed in her legal obligation to lodge the deposit in a scheme. However, the Tribunal did take into account that the deposit had been returned to the Applicant in full and within 7 days of the end of the tenancy.
13. The Tribunal found it unsatisfactory that the Respondent herself admitted that she had taken no steps to educate herself as to her legal duties and obligations as a landlord, upon commencing leasing the property approximately 5 years previously. The Tribunal considered that more than sufficient information is readily available, free of cost and in the public domain, to ensure that all landlords renting out properties in the private sector are aware of their legal duties.
14. No submissions were made to persuade the Tribunal that there had been any malice on the part of the Respondent in her dealings with the deposit, nor intention to deprive the Applicant of her deposit.

- Decision

15. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent(s) for payment to the Applicant in the undernoted sum:

ONE THOUSAND AND NINETY-FIVE POUNDS (£1,095) STERLING

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.

Fiona Watson

Legal Member/Chair

Date

17/7/19