

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/19/1851

Re: Property at 3/2 1 Queen Mary Avenue, Glasgow, G42 8DS ("the Property")

Parties:

Miss Joy Coppel, Flat 0/3, 18 Aitken Street, Glasgow, G31 3NA ("the Applicant")

Lets Direct (South) LTD, 605 Cathcart Road, Glasgow, G42 8AD ("the Respondent")

Tribunal Members:

Petra Hennig-McFatridge (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 the sum of £940 in terms of Regulation 10 (a) of The Tenancy Deposit Schemes (Scotland) Regulations 2011(the Regulations) should be made.

BACKGROUND:

The Applicant Miss Coppel made an application under Rule 103 of the Rules of Procedure on 13 June 2019 for payment under Regulation 10 (a) of the Regulations.

The Applicant submitted to the Tribunal tenancy agreement signed on 27 April 2018, email messages between the Applicant and the Respondent between 26 February 2019 and 26 April 2019, Lets Direct Southside receipt for keys dated 20 March 2019, SafeDeposits Scotland Deposit Protection Certificate confirming receipt of the deposit on 9 November 2018.

A Case Management Discussion (CMD) was fixed for 14 August 2019.

Both parties had been advised in the notification for the Case Management Discussion that the Tribunal may make a decision at that stage. The documentation including the notification of the date, time and venue of the CMD was served on the Respondents by Sheriff Officers on 9 July 2019. The Tribunal was thus satisfied that due notice had been given to the Respondents of the CMD in terms of Rule 17 (2) of the Tribunal Rules of Procedure and that the Respondents were aware that the Tribunal could make a decision at the CMD and in absence of the Respondents in terms of Rule 18 of the Rules of Procedure.

The Case Management Discussion:

The Applicant attended. The Respondents did not attend.

The Applicant explained that she had never been provided with the necessary information regarding the deposit by the landlord. She had moved out and sought advice from Shelter. She had contacted the Respondents to ask where her deposit was lodged and what her account number was and had, as per the email from the Respondents of 26 April 2019 been told to contact Safe Deposit Scotland. She had done so and received the Deposit Protection Certificate from them showing the deposit had not been lodged until 9 November 2018 although it had been paid by her prior to the start of the tenancy on 27 April 2018. The deposit repayment had not been sorted out. The Respondents had offered her alternative accommodation on her moving out but this had been unsuitable. The Respondents had various properties available. All the information she had received about the process and her deposit had been provided by the Scheme administrator and not by the Respondents.

The legal member explained that the demand for repayment of the deposit would be a separate matter and could not be dealt with in an application under Rule 103, which dealt with the matter of compliance of the landlord with The Tenancy Deposit Schemes (Scotland) Regulations 2011.

There had been no contact from the Respondents.

The legal test:

In terms of Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (the Regulations) an application under that Regulation must be made within 3 months of the end of the tenancy.

In terms of Regulation 10 "if satisfied that the landlord did not comply with any duty in Regulation 3 the First tier Tribunal

(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 First tier Tribunal 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."

In terms of Regulation 3 "(1) A landlord who had received a tenancy deposit in connection with a relevant tenancy must, within 30 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."

In terms of Regulation 42 (2) the information includes

" (a) confirmation of the amount of the tenancy deposit paid by the tenant and the date on which it was received by the landlord,

(b) the date on which the tenancy deposit was paid to the scheme administrator...

(d) a statement that the landlord is , or has applied to be, entered on the register maintained by the local authority under section 82 (registers) of 2004 Act,

(e) the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid and

(f) the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement.

(3) the information in paragraph (2) must be provided

(a) where the tenancy deposit is paid in compliance with regulation 3 (1), within the timescale of set out in that regulation, or

(b) in any other case, within 30 working days of payment of the deposit to the tenancy deposit scheme."

Findings in fact:

1. The Applicant and the Respondents entered into a Private Residential Tenancy Agreement for the property on 27 April 2018.
2. The Respondents are the landlord stated in the Tenancy Agreement under clause 3.
3. The Applicant paid a deposit of £470 to the landlord at the start of the tenancy period.
4. The tenancy started on 27 April 2018.
5. The tenancy ended on 27 April 2019.
6. The Applicant returned the keys to the property on 20 March 2019
7. The deposit was not lodged with an approved scheme until 9 November 2019.
8. The Respondents have more than one rental property on their books and are a company engaged in property rental.
9. The Applicant did not receive any communication advising her of the matters stated in Regulation 42 (2) of the Regulations apart from the intended Scheme administrator.
10. The clause in the tenancy agreement dealing with the deposit (Clause 11) states that the scheme administrator is Safe Deposit Scotland and provides a contact telephone number.
11. The Respondent did not return the deposit to the Tenant at the end of the tenancy.

Reasons for Decision:

The tribunal considers that the landlord did not comply with the requirements of Regulations 3 and 42 of The Tenancy Deposit Schemes (Scotland) Regulations 2011.

There were no representations from the Respondents and the facts of the case are not in dispute.

The deposit was not paid over to an approved scheme within 30 working days of the commencement of the tenancy agreement and the information stated in Regulation 42 (2) of the Regulations was not provided by the Respondents to the Applicant. The Respondents did not even provide the information about the account number for the deposit on request by the Applicant and simply advised the Applicant to contact Safe Deposit Scotland for all information. There is no landlord registration number in the tenancy agreement and none was provided afterwards. The Respondents provided no information as to why the deposit was not lodged until 9 November 2019. The Respondents offered the Applicant alternative accommodation as stated in the email correspondence and thus the Tribunal is satisfied that they are a company which deals with several properties in the course of their business activities and thus should be well aware of the requirements and obligations regarding deposits taken from tenants in terms of the Regulations.

Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 is a regulatory sanction to punish the landlord for non-compliance with the rules. The non-compliance with the Regulations is not disputed by the landlord.

Ultimately the Regulations were put in place to ensure compliance with the Scheme and the benefits of dispute resolution in cases of disputed deposit cases, which the Schemes provide.

Whilst the Tribunal notes the request in the written submissions of the Applicant for payment of the maximum of three times the deposit amount, the Tribunal does not agree that the case warrants the maximum remedy.

The Tribunal considers that the discretion of the Tribunal requires to be exercised in the manner set out in the case *Jenson v Fappiano* (Sheriff Court (Lothian and Borders) (Edinburgh) 28 January 2015) by ensuring that it is fair and just, proportionate and informed by taking into account the particular circumstances of the case.

The Tribunal took into account the length of time the deposit was unprotected, which was over 6 months out of a 12 months tenancy period, the fact that the landlord is a professional landlord and the fact that the landlord made no efforts to provide the information required and provided no explanation as to why the deposit was not protected immediately on receipt of the deposit payment. On the other hand the Tribunal also took into account that the Respondents did ultimately lodge the deposit, albeit late, with the scheme stated in the tenancy agreement during the tenancy period. The Tribunal further considered that in this case the matter of the return of the deposit is still pending.

In all the circumstances the tribunal considered it fair, proportionate and just to make an order for the sum of £940, which constitutes a meaningful sanction for non-compliance of the Regulations at the level of 2 times the deposit sum of £470.

Decision:

The First-tier Tribunal for Scotland (Housing and Property Chamber) grants an order against the Respondent for payment to the Applicant of the sum of £940

in terms of Regulation 10 (a) of The Tenancy Deposit Schemes (Scotland) Regulations 2011.

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.

Petra Hennig-McFatrige

Legal Member/Chair

14.8.19

Date