



**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/19/1981

Re: Property at Flat 0/1, 23 Blackfriars Street, Glasgow, G1 1BL ("the Property")

Parties:

Miss Kristine Meistere, Mr Richard McGarvey, Flat 7, 27 Diverview Drive, Glasgow, G5 8EU; 1 Langlea Way, Cambuslang, G72 8ED ("the Applicants")

Sava Estates Ltd, C/O Edzell Property Management, 1008 Pollokshaws Road, Glasgow, G41 2HG ("the Respondent")

Tribunal Members:

Jim Bauld (Legal Member)

Decision (in absence of the Respondent)

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent should be ordered to make payment to the Applicants of the sum of NINE HUNDRED POUNDS (£900.00).

Background

2. An application was received by the Tribunal on 27 June 2019. In the application, the Applicants seek a payment order in terms of Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") in respect of an alleged failure by the Respondent to comply with those regulations. A case management hearing was set to take place on 24 October 2019.

The Case Management Discussion

3. The case management discussion took place on 24 October 2019 within the Glasgow Tribunals Centre, York Street, Glasgow. Mr Richard McGarvey was present and explained that his co-Applicant Ms Kristine Meistere was unavailable to attend. The Respondents were neither present nor represented but their representatives, Edzell Property Management had written to the Tribunal by letter dated 14 October 2019. The Tribunal took into account the terms of the letter which had been lodged.
4. Mr McGarvey addressed the Tribunal. He submitted to the Tribunal that it was clearly admitted by the Respondents that a tenancy deposit had been taken in respect of the tenancy which he and Ms Meistere had entered into in respect of the property at 23 Blackfriars Street, Glasgow. He stated that he and Ms Meistere had previously had a bad experience with a former landlord with regard to a tenancy deposit being lodged and accordingly after they had paid the deposit to Edzell Property they had emailed on a number of occasions asking them to confirm that the deposit had been lodged. Emails had been lodged with the Tribunal dated 26 March 2018 and 15 June 2018 from Ms Meistere to the letting agent. On 18 June 2018 a reply was sent from the letting agent confirming that the deposit had been lodged with Letting Protection Services Scotland and providing details of the deposit ID number. That email did not disclose that the deposit had actually been lodged on 2 May 2018. The deposit had been paid to the letting agent on 6 February 2018.
5. Mr McGarvey explained that the tenancy had ended on 4 April 2019 and the tenancy deposit scheme had dealt with the appropriate claim made by the landlord for deductions from the deposit.
6. Mr McGarvey submitted to the Tribunal that the failure by the letting agent to lodge this deposit was a serious breach of the Tenancy Deposit Scheme. He submitted that they were a professional letting agency and they had given no explanation for their failure to lodge the deposit in the correct timeframe. He advised the Tribunal he was not seeking to get a large award of money but he

noted that the letter which had been submitted to the Tribunal from the letting agent admitted their failure to lodge the deposit and the applicants did not regard their claim as spurious and vexatious. He accordingly invited the Tribunal to make an appropriate award in terms of the scheme.

7. The Tribunal noted the terms of the letter from the letting agent. In the letter the letting agents admit that the deposit in question was lodged on 2 May 2018 and state that this was delayed due to an administration error which was explained to the tenants and the letting agents claimed that the applicants "at the time understood and did not raise any issue". This did not appear to be the position adopted by Mr McGarvey at the hearing.
8. The letter from the letting agent goes on to say that as the tenant knew of the initial delay and did not raise any issue at the time then their claim is nothing more than "spurious and vexations" (sic).

Findings in Fact

9. The Applicants and the Respondent were respectively the tenants and landlord under a tenancy which commenced on 6 February 2018.
10. The Applicants paid to the Respondent's letting agents a deposit of £575. 00.
11. The Respondent was under a duty in terms of the 2011 Regulations to make payment of that deposit into an approved tenancy deposit scheme within 30 working days of the commencement of the tenancy.
12. The deposit was paid to an appropriate tenancy deposit scheme on 2 May 2018 which is more than 30 working days from the commencement of the tenancy.
13. The Respondent accordingly failed to make payment of the deposit into an approved tenancy deposit scheme in accordance with the 2011 Regulations.

Reasons for Decision

14. This application relates to a failure by the Respondent to place a tenancy deposit within an approved tenancy deposit scheme. Landlords have been required since the introduction of the 2011 Regulations to make payments of tenancy deposits into an approved scheme within 30 working days of the commencement of the tenancy. In this case it was accepted by all parties that the landlord had failed to do so. Accordingly the landlord was in breach of the duties contained in regulation 3 of the 2011 Regulations. Those duties are twofold. There is a requirement to pay the deposit to a tenancy deposit scheme and a requirement to provide a tenancy with certain specified information regarding the tenancy deposit. The Respondent failed both duties.
15. Regulation 9 of the 2011 Regulations states that if a landlord does not comply with either of the duties in regulation 3 then the Tribunal must make an order that a landlord makes a payment to the tenant of an amount "not exceeding three times the amount of the tenancy deposit". As it was accepted by the landlord's agent that the deposit had not been lodged in accordance with the regulations, the Tribunal in this case is required to make an order for payment. The only matter to be determined by the Tribunal is the amount of the payment.
16. In this case the Tribunal carefully considered the evidence which had been produced. Evidence consisted of the information contained with the Tribunal papers, the additional information provided by Mr McGarvey at the hearing and the letter which had been submitted by the letting agent.
17. The Tribunal notes that the letting agent is an established professional letting agency and property manager. They must have been aware of the requirements of the 2011 Regulations. No explanation was given for the alleged "administration error" which led to the deposit being lodged late. Accordingly there is a clear breach of the 2011 Regulations.

18. The regulations were introduced to safeguard deposits paid by tenants. They were introduced against a background of landlords abusing their position as the holder of deposit moneys. The intention of the regulations was to ensure that deposits were put out with the reach of both a landlord and a tenant and to ensure that there was a dispute resolution process accessible to both landlords and tenants at the end of a tenancy and which placed them on an equal footing. The regulations make it clear that the order to be made by the Tribunal for failure to comply with the regulations are a sanction or a penalty. The Tribunal does not accept the position stated in the letting agents' letter that this claim is spurious and/or vexatious.
19. The Tribunal notes that in a recent Upper Tribunal decision (reference UTS/AP/19/0023) the Upper Tribunal indicated that it is appropriate for the First Tier Tribunal to differentiate between breaches by landlords who have numerous properties and run a business of letting properties as such and a landlord who only has one property which they own and let out. Sheriff Bickett indicated in this decision that it would be "inappropriate" to impose similar penalties on two such landlords. It is clear in this case that the Tribunal is dealing with a professional landlord being represented by a property management company with significant experience in the field of landlord and tenant law.
20. In this case there was a clear breach of the 2011 Regulations. No proper explanation has been given to the Tribunal for the alleged administration error. The Tribunal noted that the landlord's agent had not even provided the required statutory information to the tenants until they had been requested by the tenant to provide confirmation of the lodging of the deposit on more than one occasion. The Tribunal however does note that the deposit was eventually protected and was only unprotected for a period of approximately three months in a tenancy which lasted 14 months. Accordingly the Tribunal does not find this breach should be penalised at the highest end of the potential scale, namely three times the deposit. However the Tribunal must bear in mind that failure in this regard was that of a professional letting agency and not an "amateur" landlord. Accordingly the Tribunal takes the view that

the penalty in this case should fall in approximately the middle of the range which is open to the Tribunal and the Tribunal determines that an award of £900.00 should be made being approximately one and a half times the deposit.

21. The Tribunal is also content that it can exercise the powers contained within the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 and in particular rule 17 of those rules. That rule allows a First-tier Tribunal at a case management discussion "to do anything at a case management which it may do at a hearing, including making a decision." Accordingly the Tribunal has determined it can make a final decision at the case management discussion without remitting this case to a further hearing. The Tribunal takes the view that it has more than sufficient information before it to make a final decision in connection with this application. The tribunal has considered the papers which have been lodged, the evidence provided by the Applicant and the letter from the property management company to confirm that the facts are not disputed and that the breach of the regulations is admitted.

Decision

22. The Tribunal awards payment of the sum of NINE HUNDRED POUNDS (£900.00) to be paid by the Respondent to the Applicants.

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.

Jim Bauld

Legal Member/Chair

5 November 2019
Date