

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under the Tenancy Deposit Schemes (Scotland) Regulations 2011, regulations 9 and 10

Chamber Ref: FTS/HPC/PR/19/2086

Re: 2/1, 127 Shuna Street, Glasgow G20 9QP ("the Property")

Parties:

Peter Welsh, 1/2, 2 Pembroke Street, Glasgow G3 8LS ("the Applicant")

Queens Cross Factoring Limited, 45 Firhill Road, Glasgow G20 7BE ("the Respondent")

Tribunal Member:

David Bartos (Legal Member)

Summary of Case Management Discussion

- 1. In this case the Applicant seeks a payment from the Respondent claiming that the Respondent breached its duty in relation to the tenant's deposit for the tenancy of the Property.**
- 2. A case management discussion ("CMD") took place on 3 September 2019 at 10.00 hrs at the Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The Applicant appeared on his own behalf at the CMD. The Respondent was represented by their Letting/Marketing Officer James Ledger and their Head of Factoring Service, Donalda Ogg.**

Facts Not in Dispute Between the Parties

- (a) On 29 March 2018 the Respondent granted a Private Residential Agreement of the Property to the Applicant ("the Lease"). The date of entry was 29 March 2018. The address of the Property was numbered "1/2" and the Lease was erroneous where it said "2/1".**
- (b) The Lease provided for the payment by the Applicant to the Respondent of a deposit of £558.85 by no later than the entry date.**

The Applicant paid this deposit to the Respondent by direct debit on the date of entry.

- (c) The Respondent registered the deposit with Mydeposits Scotland. Through oversight it did not lodge the deposit with that or any other scheme administrator.
- (d) The Lease was terminated on 23 April 2019. The Applicant had left the Property by then.
- (e) The Respondent required to inspect the Property in order to ascertain whether there was any damage that would be recoverable from the deposit. There was some water damage and other matters but none of these were due to the Applicant and none were recoverable from the deposit. The need to investigate caused some delay in the Landlord's recovery of the deposit.
- (f) The Applicant had spoken to a friend who was a judge. He had advised him to enquire about the location of the deposit and informed him of the statutory provisions regarding the deposit.
- (g) By e-mail dated 15 May 2019 the Applicant wrote to the Respondent asking for an update and for confirmation of the scheme administrator for the deposit. On the same day the Respondent sent an e-mail to the Applicant confirming that it had instructed safe deposit Scotland to repay the deposit without deduction but that it had been informed that the administrator did not hold the deposit. The Respondent's representative also confirmed that the cheque for the deposit would be written out and posted.
- (h) However the deposit cheque was not written out until 24 June and posted to be received by the Applicant on 2 July 2019.
- (i) On 4 July 2019 the Applicant had applied to the Tribunal for an order for payment. The deposit cheque cleared that day.

Oral Evidence and Submissions

- 3. The Applicant told the Tribunal of the history of his dealings with the Respondent in respect of the deposit. These were not in dispute and are reflected in the findings in fact made above. He submitted that there had been a breach of the 2011 Regulations.
- 4. He expressed frustration that he had been unable to recover the deposit until over 2 months after the end of the tenancy and over a month after the Respondent had notified him that the deposit would be forthcoming. He submitted that the Respondent was a large organisation rather than a small landlord. He left the matter of quantification of any payment to be made to the Tribunal.

5. For the Respondent Mr Ledger gave evidence which is reflected in the findings in fact made above. He explained that the usual practice was that the Respondent would inspect a property to see if there was anything to be recovered off the deposit. If there was something then the practice was to seek to agree it with the tenant before applying to the administrator to make payment. If there was nothing, then the tenant would be told informally that nothing would be taken off. In this case he had gone to check online about the deposit and discovered that while it had been registered with the administrator no funds had been transferred. This was an oversight.
6. Mr Ledger told the Tribunal that the cheque had then been raised. However it had taken longer than normal to issue because others in the Respondent had taken issue again over potential damage. This meant that it was not dated until 24 June and had taken another week to be signed and sent off. That was due to the volume of workload. He said that the Respondent had changed its work processes so that such an incident did not occur again.
7. Mrs Ogg accepted that the Respondent had failed to comply with the Regulations. She submitted that one deposit's worth was a sufficient payment in respect of the breach, based on the delay in repayment after the tenancy had ended.

Reasons

8. The Tribunal considered the application, the written submissions which it had received, the oral submissions and evidence of the Applicant and the documentary evidence submitted by him. It found that it was able to make sufficient findings in fact and that to do so was not contrary to the interests of the parties. It was therefore able to decide the case at the CMD without a hearing. It could see no benefit to be gained from a further hearing which would cause delay.
9. The Tribunal was satisfied that the Applicant had given his evidence credibly and was a reliable witness. No doubt was cast on that evidence. On the basis of that evidence and the supporting documentary evidence the Tribunal made the findings in fact set out above.
10. The Tribunal was also satisfied that Mr Ledger had given his evidence credibly and was a reliable witness. Again no doubt was cast on that evidence and in particular how the Respondent had reacted following the end of the tenancy.
11. The Tribunal accepted that there had been a breach by the Respondent of its duties under regulation 3(1)(a) of the 2011 Regulations. It followed that a sum of up to three times the deposit fell to be paid.

12. This was a case where the Respondent had taken the first step to lodge the deposit with the administrator in registering it but through oversight had failed to lodge it. That said the matter had remained undetected for the whole duration of the tenancy which was just over a year. Following the termination of the tenancy the Respondent had discovered the failure to lodge but had delayed in returning the deposit for about 5 weeks thereafter. The aim of the Regulations is to ensure protection of the deposit in the interests of the tenant. No or inadequate attention had been given to this aim even after the breach had been discovered. In all the circumstances the Tribunal found that the sum of £1000 being just less than twice the deposit amount was a fair and proportionate payment in the light of the breach.

Outcome

13. The First-tier Tribunal for Scotland (Housing and Property Chamber) orders the Respondent to pay to the Applicant the sum of One Thousand Six Hundred and Fifty Pounds (£ 1000.00) Sterling.

Right of Appeal

14. In terms of section 46 of the Tribunals (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.

NOTE: This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to tribunal members in relation to any future proceedings on unresolved issues.

D. Bartos

Date 3rd September 2019

Legal Member _____