

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/PR/20/2253

Re: Property at 52 Brunton Street, Cathcart, Glasgow, G44 3NQ (“the Property”)

Parties:

Miss Robyn Carlisle, 10 Birken Road, Lenzie, G66 5PB (“the Applicant”)

Miss Shona Wylie, 52 Brunton Street, Cathcart, Glasgow, G44 3NQ (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member)

BACKGROUND

1. By lease dated 16th April 2019 the Respondent let the property to the Applicant and her partner, Mr Ronald William McGee;
2. The start date of the tenancy was 24th April 2019;
3. A tenancy deposit of £1,104.00 was paid by the Applicant and Mr McGee to the Respondent;
4. The tenancy deposit was not lodged with an approved tenancy deposit scheme within the required period of 30 days;
5. The tenancy ended on 5th October 2020;
6. At that time it became apparent to the Applicant and Mr McGee that the tenancy deposit had not been lodged with an approved scheme. When that was drawn to the attention of the Respondent the deposit funds were immediately lodged with Safe Deposit Scotland, an approved tenancy deposit scheme;
7. On 26th October 2020 the Applicant presented an application to the tribunal seeking an order for payment as a result of the breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (the TDS Regulations) as a result of the failure to lodge the funds timeously;

8. As at the date of the Case Management Discussion on 8th January 2021, the tenancy deposit scheme had concluded a dispute resolution matter between the parties although, as at that date, the funds had not been disbursed by the tenancy deposit scheme;

THE CASE MANAGEMENT DISCUSSION

9. The Case Management Discussion was conducted by teleconference. The Parties both participated in the proceedings. In addition, Ronald William McGee participated by teleconference. On the basis that he was a joint tenant, the Tribunal permitted him to be involved in the proceedings and to make representations;
10. The application set out the position of the Applicant. It included, however, reference to issues relating to the termination of the tenancy, stress caused as a result of that, additional stress caused by the fact that the Applicant was pregnant at the time of the termination of the tenancy and certain costs incurred by the Applicant (and Mr McGee) as a result of the termination of the tenancy;
11. The Respondent had previously provided written submissions to the tribunal in which she accepted fault on her part, that she was an inexperienced landlord, this being her only experience of letting a property, that the property was formerly her own residence but when she was relocated abroad for her work she decided to let it, that when she required to return to this country she served a notice to leave terminating the tenancy, that at the commencement of the tenancy she became aware that she required to lodge the tenancy deposit with an approved scheme and, indeed, set up an account with Safe Deposit Scotland for that purpose (confirmation of which was provided), that she failed to lodge the deposit with Safe Deposit Scotland and had then overlooked the matter until it was drawn to her attention at the end of the tenancy, at that point she immediately lodged the funds with Safe Deposit Scotland and the dispute resolution service was then invoked to determine to whom it should be disbursed;
12. During, the Case Management Discussion, the Tribunal pointed out to the participants that there were certain factors which were not relevant to any determination it had to make. In particular, it was pointed out that any stress or expenses incurred as a result of the termination of the tenancy were not a relevant factor; that any failure on the part of the Applicant or Mr McGee to check that the deposit had been lodged or to remind the Respondent that it had not been lodged, was not a relevant factor – those were not the responsibility of the Applicant and such obligations rested with the Respondent – and any issues in relation to the termination of the tenancy, aside from

any issue in relation to the deposit funds, were not relevant to the determination of the matter before the Tribunal;

13. In relation to factors the Tribunal considered to be relevant, the participants were advised and asked to address the Tribunal in relation to the following:-

- a) The experience of the landlord;
- b) Any reason or explanation for the deposit funds not being lodged;
- c) The length of time the deposit funds remained unprotected;
- d) Whether the funds were available when the failure to lodge became apparent;

14. In relation to those specific matters there did not appear to be any disagreement in relation to the relevant facts;

15. It was agreed between the participants that, while the tenancy agreement was in the name of the Applicant and Mr McGee, the application to the Tribunal was in the name of the Applicant alone. Any order for payment made by the Tribunal would be in the Applicant's name alone and Mr McGee accepted that to be the case;

FINDINGS IN FACT

16. The tribunal found the following facts to be admitted or proved

- a) By lease dated 16th April 2019 the Respondent let the Property to the Applicant and her partner, Mr Ronald William McGee;
- b) The start date of the tenancy was 24th April 2019;
- c) A tenancy deposit of £1,104.00 was paid by the Applicant and Mr McGee to the Respondent;
- d) The tenancy deposit was not lodged with an approved tenancy deposit scheme within the required period of 30 days;
- e) The tenancy ended on 5th October 2020;
- f) At that time it became apparent to the Applicant and Mr McGee that the tenancy deposit had not been lodged with an approved scheme. When that was drawn to the attention of the Respondent the deposit funds were immediately lodged with Safe Deposit Scotland, an approved tenancy deposit scheme;
- g) On 26th October 2020 the Applicant presented an application to the tribunal seeking an order for payment as a result of the breach of the tenancy deposit regulations as a result of the failure to lodge the funds timeously;

- h) As at the date of the Case Management Discussion on 8th January 2021, the tenancy deposit scheme had concluded a dispute resolution process between the parties although, as at that date, the funds had not been disbursed by the tenancy deposit scheme;

REASONS FOR DECISION

17. The tribunal considered the following matters in reaching its decision:-

A. THE TDS REGULATIONS

These provide 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.

9.(1) A tenant who has paid a tenancy deposit may apply to the sheriff for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.

(2) An application under paragraph (1) must be made by summary application and must be made no later than 3 months after the tenancy has ended.

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.

References to “the sheriff” should now be read as referring to the First Tier Tribunal for Scotland.

B. EXPERIENCE OF THE LANDLORD

The respondent was an inexperienced landlord. There was no dispute in relation to the fact that this was her only experience of letting a property and that the decision to Let it was prompted by her being posted abroad by her employer. She has never before let any other property. She has never since let any other property. It was clear that she appears to have learned a harsh lesson as a result of these proceedings and what she considered to be an inevitable order for payment which was to be made against her;

C. REASON FOR FAILURE TO LODGE THE DEPOSIT FUNDS

It appeared to be the case that this arose due to an oversight on the part of the Respondent, albeit the issue continued until the end of the tenancy. The Respondent advised that while abroad matters were difficult for her as a result of significant health concerns and work issues. Documentation had been produced to the Tribunal, which made it clear that the Respondent had contacted Safe Deposit Scotland during March 2019 to open an account with them for the purpose of lodging the deposit funds. The Respondent, therefor, while being an inexperienced landlord, had clearly become aware of the fact that the funds required to be lodged and took steps to make arrangements for that in advance of the tenancy commencing. The setting up of the account with Safe Deposit Scotland adds credence to the Respondent’s assertion that the subsequent failure to lodge the deposit funds was due to an oversight rather than a deliberate intention not to do so. Had there been such an intention, the

Respondent need not have opened the account with Safe Deposit Scotland in the first place;

D. THE PERIOD OF TIME FOR WHICH THE DEPOSIT REMAINED UNPROTECTED

This was for the entire duration of the lease from April 2019 until October 2020. The funds were only lodged with the error was drawn to the attention of the Respondent at the termination of the tenancy;

E. WHETHER THE FUNDS WERE AVAILABLE TO LODGE

It is clear that the Respondent was in possession of the deposit funds and that these were lodged with Safe Deposit Scotland on 5th October 2020, when the fact that they had not been lodged timeously was drawn to the attention of the Respondent. The Tribunal deals with many such cases and in many instances the deposit funds are not available;

18. Having regard to those factors, the Tribunal considered that this was a breach of the regulations which was at the lower end of any scale of any such breaches. The tribunal was dealing with an inexperienced landlord who had taken steps at the outset to comply with the regulations but, unfortunately, had thereafter failed to do so. The deposit funds, however, appear to have been available throughout the tenancy and were subsequently lodged. The purpose of lodging them – to protect the deposit and to regulate the disbursement of the deposit in the event of any competing claims at the end of the tenancy – had been fulfilled and a determination made in relation to the same, albeit the funds had not yet been disbursed by the tenancy deposit scheme. That situation, however, would have been exactly the same even if the deposit funds had been lodged at the commencement of the tenancy and, therefore, the Applicant and Mr McGee was not prejudiced in any way as a result of the dispute resolution services being utilised;
19. In all the circumstances, the tribunal considered, having regard to the factors referred to, an order for payment in the sum of one half of the deposit funds, being an amount of £552, was the appropriate order to make in this case;

DECISION

The Tribunal granted an order against the Respondent for payment to the Applicant in the sum of FIVE HUNDRED AND FIFTY TWO POUNDS (£552.00) 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.

8 January 2021

Legal Member/Chair

Date