



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”)

Chamber Ref: FTS/HPC/PR/20/2426

Re: Property at 12 Woodlands Walk, Cults, Aberdeen, AB15 9DW (“the Property”)

Parties:

Mr Michael Farquhar, 22 Fraser Road, Alford, Aberdeenshire, AB33 8GB (“the Applicant”)

Mr William Miller, 119 Bon Accord Street, Aberdeen, AB11 6EH (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £687.50 should be made in favour of the Applicant.

Background

1. By application received on 19 November 2020, the Applicant seeks an order in terms of Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and Regulations 9 and 10 of the 2011 Regulations. The Applicant lodged a copy of a tenancy agreement, an email to the Respondent giving notice that he intended to vacate the property on 28 August 2020 and a certificate from Letting Protection Service Scotland (“LPSS”) which states that a deposit of £550 was lodged on 7 March 2020.
2. A copy of the application and supporting documents were served on the Respondent. Both parties were advised that a case management discussion (“CMD”) would take place by telephone conference call on 19 January 2021 at

2pm and that they were required to participate. Prior to the CMD both parties lodged written representations. The Applicant also lodged a bank transaction record in relation to a withdrawal of £550 on 26 October 2019 and both parties lodged text/WhatsApp messages.

3. The application called for a CMD on 19 January 2021 at 2pm. The Applicant and Respondent both participated.

The submissions

4. In his first written submission, the Respondent apologised to the Applicant for any inconvenience caused. He listed all payments received from the Applicant over the nine month period of the lease and stated that only 9 payments had been received between 22 November 2019 and 28 July 2020. He had no record of receiving a deposit and noted that the lease did not mention a deposit. He stated that the property was run as a partnership, with the associated tasks divided between himself and the joint owner, Clare Miller. He was responsible for tenancy deposits. He and Ms Miller had discussed the matter and believed that the first two payments received - £640 on 22/22/19 and £540 on 30/12/19 – were odd amounts because the Applicant wanted entry before the 28 November 2019, the date he wanted to pay his rent, as this was when he was paid. When he was using the LPSS website in connection with another tenant's deposit, he noticed that there was no deposit lodged for the Applicant, and immediately lodged £550 without checking if a deposit had been paid. The Respondent also stated that the deposit was repaid in full to the Applicant at the end of the tenancy.
5. In response the Applicant stated that the deposit had been paid in cash on 26 October 2019, when he collected the lease. He referred to text messages, the bank withdrawal record, and the lease. He also provided an explanation for the odd payments of rent at the beginning of the lease. He stated that the Respondent would not have lodged a sum of money in a scheme without first checking that a deposit had actually been paid.
6. The Respondent lodged a further submission which confirmed that the deposit had been received in cash from the Applicant. He advised that the late lodging of the deposit was due to an error on his part.

The CMD

7. From the application form, the documents lodged in support of the application and the information provided at the CMD the Tribunal noted the following: -
 - (i) The tenancy started on 28 November 2019 and terminated on 28 August 2020.

- (ii) The Applicant paid a deposit of £550 prior to the start of the tenancy.
 - (iii) The deposit of £550 was not lodged in an approved tenancy deposit scheme until 7 March 2020.
 - (iv) The Respondent failed to provide the Respondent with information regarding the lodging of the tenancy deposit in an approved scheme.
8. Mr Miller advised the Legal Member that he lodged the deposit with LPSS as soon as he realised that he had failed to do so. He had been checking the website in connection with another tenant and realised that Mr Farquhar's deposit was not there. He stated that he has several properties which are let out and is aware of his responsibilities regarding tenancy deposits. Most of his properties are managed by a letting agent, who deals with these matters on his behalf. As the property which is the subject of the application is located nearby, he and the joint owner manage it themselves. They divide up the tasks associated with the property and one of his tasks is to deal with the deposits. He explained that he is not good with administration and overlooked this matter. He regrets this failure and tried to rectify it as quickly as possible. He also stated that the whole deposit was returned to Mr Farquhar when the tenancy ended. The Legal Member noted that the certificate from LPSS states that the tenancy started on 7 March 2020. Mr Miller said that he had been unsure what date to provide and thought it might delay the lodging of the deposit if he disclosed the actual start date. He accepted that he had provided inaccurate information to the tenancy deposit scheme. Mr Miller concluded by stating that the property has now been sold and that no longer manages any property himself.
9. Mr Farquhar advised the Legal Member that he had not suffered any adverse financial consequences as a result of Mr Miller's failure to comply with the 2011 Regulations. However, he felt that a high penalty should be imposed to deter Mr Miller from breaching the regulations in the future. He did not challenge the claim that the failure was due to error but advised the Legal Member that another tenant in the property had moved out in January 2020, and a new one moved in during February 2020. This being the case, he would have expected Mr Miller to realise much sooner than March 2020 that he had not lodged his deposit. Mr Farquhar also advised the Legal Member that he did not know anything about the deposit until he was notified by LPSS on 20 April 2020, that it had been lodged on 7 March 2020. Mr Miller had therefore also failed to comply with the duty imposed on him to provide Mr Farquhar with information about the deposit being lodged.

Findings in Fact

- 10. The Applicants is the former tenant of the property.
- 11. The tenancy started on 28 November 2019.

12. The Respondent is the former owner and landlord of the property.
13. The Applicant paid a deposit of £550 prior to the start of the tenancy.
14. The tenancy terminated on 28 August 2020.
15. The deposit paid by the Applicant was not lodged by the Respondent in an approved tenancy deposit scheme until 7 March 2020.
16. The deposit paid by the Applicants was repaid to him in full at the end of the tenancy.

Reasons for Decision

17. Regulation 3 of the 2011 Regulations states –

(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.

(1A) Paragraph (1) does not apply –

- (a) Where the tenancy comes to an end by virtue of section 48 or 50 of the Private Housing (Tenancies) (Scotland) Act 2016, and
- (b) The full amount of the tenancy deposit received by the landlord is returned to the tenant by the landlord,

Within 30 working days of the beginning of the tenancy.

18. The Tribunal is satisfied that the Applicant's tenancy is a relevant tenancy in terms of the 2011 Regulations and that a deposit of £550 was paid and not lodged in an approved deposit scheme within 30 days of the start of the tenancy. The Respondent also failed to provide the Applicant with the required information regarding the deposit. The Tribunal notes that the application was lodged with the Tribunal on 19 November 2020. The Applicant has therefore complied with Regulation (9)(2) of the 2011 Regulations, which requires an application to be submitted no later than 3 months after the tenancy had ended.

19. Regulation 10 of the 2011 Regulations stipulates that if the Tribunal is satisfied that the landlord did not comply with a duty in terms of regulation 3, it “ **(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit.**” The Tribunal therefore determines that an order must be made in favour of the Applicant.

20. The Applicant seeks an award of three times the deposit, the maximum which can be awarded. However, the Legal Member notes that the deposit was eventually lodged in an approved scheme by the Respondent, albeit late. The deposit was received by LPSS nine weeks after the last date allowed in terms of the 2011 Regulations and nearly 6 months before the tenancy came to an end. It was therefore unsecured for a relatively short period of time. The Applicant did not experience any financial loss and the full deposit was repaid to him at the end of the tenancy. On the other hand, the Respondent is an experienced landlord who, by his own admission, is fully aware of his obligations in terms of the 2011 Regulations. Furthermore, he provided inaccurate information to LPSS when he lodged the deposit late and failed to notify the Applicant that the deposit was now secured with LPSS. While the late lodging of the deposit does appear to be the result of genuine error, his explanation for the inaccurate information about the tenancy start date was less convincing. He should also have taken immediate steps to notify the Applicant that it had now been lodged with LPSS. In the circumstances, the Legal Member is satisfied that an award of one and a quarter times the deposit is appropriate.

Decision

21. The Tribunal determines that an order for payment of the sum of £687.50 should be made in favour of the Applicant.

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.

Josephine Bonnar

Josephine Bonnar, Legal Member

19 January 2021

Date