



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

Chamber Ref: FTS/HPC/PR/19/2482

Re: Property 4 Lindsay Place, Glenrothes, Fife, KY7 4JL (“the Property”)

Parties:

Miss Lisa Elliott, 218 Lady Alice Path, Glenrothes, Fife, KY7 6SD (“the Applicants”)

Advance Properties, Unit 36, Crosshill Business Unit, Crosshill, Lochgelly, KY5 8BJ (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member)

1. This Hearing was a Case Management Discussion (hereinafter referred to as a “CMD”) fixed in terms of Rule 17 of the Procedure Rules and concerned an Application under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (hereinafter referred to as “the Deposit Regulations”). The purpose of the Hearing being to explore how the parties dispute may be efficiently resolved. The purpose of the hearing was explained to parties. Parties understood a final decision could be made.

2. Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £900 in terms of Regulation 10(a) of the Regulations should be made.

3. Attendance and Representation

The Applicant was present and unrepresented.

The Respondent’s office manager Michelle Simpson, and letting agent, Rhonda Blair attended the Tribunal unrepresented.

4. Preliminary Matters

- The Legal Member asked the Applicant to clarify her knowledge of the landlord, she confirmed the Respondent was her landlord. She said she had no idea who the owner was. It was the Respondent she said further who took her deposit and signed the tenancy. All repair issues were dealt with by the Respondent and rent was paid to them. The Applicant had no other information from the Respondent to suggest otherwise.
- The Respondent's position was that the landlord has paid for a premium service to ensure no contact with the Applicant and that all matters are dealt with by the Respondent for them. The Tenancy agreement they referred to says "A&R" only with the Respondent's address given. They further said this would be the portfolio company's name and the owners name nor address would not be given. The portfolio company address was the Respondent's address.
- The Respondent sought to lodge a batch management copy page for the Respondent with My Deposits Scotland printed in 14th October 2019. The Legal Member allowed same and the Applicant had a chance to consider its terms.
- The Applicant confirmed she was seeking a compensation order relating to a breach of the Deposit Regulations in regards a failure to register a tenancy deposit and a failure to provide information in terms of Regulation 3 and 42 of the Deposit Regulations.
- The Tenancy commencement date was 20th September 2016. The tenancy ended in May 2019.

5. The Case Management Discussion

- The Applicant set out her position for the purpose of the CMD summarised as follows;
 - The initial deposit was £450 made on commencement of the tenancy and paid to Advance Properties, whom she regarded as her landlord given no other landlord was fully disclosed.
 - Regulations 3 of the Deposit Regulations provide that the Respondent has 30 working days to register the deposit with a deposit protection scheme and to provide tenants with the information required in terms of regulation 42 of the Deposit Regulations.
 - The Applicants position was that the Respondent breached these Regulations. She said that she found out from Fife Council who were assisting her with other matters concerning the property that she should have been given paperwork to confirm her deposit was paid to an approved scheme.
 - The Applicant said she contacted the Respondent and was told twice that the money had been paid to an approved scheme,
 - The Applicant then contacted the deposit schemes and was told that no one had the deposit and she advised the Respondent of this.
 - She then received an email from My Deposit Scotland to say the deposit had now been lodged for the property on 29th May 2018.

- The Respondent in reply set out their position for the purpose of the CMD which she set out as follows;
 - The Respondent commenced her submission by stating that she was on mat leave at the time of the commencement of the tenancy and that the staff who worked on the office are no longer working there.
 - The Respondent said when they were alerted by the Applicant about the issue they immediately paid the deposit into My Deposit Scotland on 29th May 2018.
 - When they received notice of the Application they investigated matters and noted that in the print out they lodged dated 14th October 2019 that there was unallocated money lodged by the Respondent with My Deposit Scotland. They are of the view that the deposit was therefore they think lodged with the scheme but unallocated to the property.
 - The Respondent could not say if information in terms of Regulation 42 of the Regulations had been given to the Applicant.

6. Findings in Fact

- The Tenancy commenced on 20th September 2019 and ended in May 2019.
- The Tenant regarded the Respondent her landlord.
- The Respondent did not fully disclose a landlord to Applicant during the Tenancy and acted as same.
- The Respondent did not provide information timeously as required in terms of Regulation 42 of the Deposit Regulations.
- The Respondent did not register the tenancy deposit in connection with the property within 30 days of commencement.
- On 29th May 2019 the Respondent registered the tenancy deposit in connection with the property with My Deposit Scotland.
- The Respondent breached the Deposit Regulations in connection with the property, namely Regulations 3 and 42 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

7. Reasons for Decision

1. Rule 17 of the Procedure Rules provides that a Tribunal can do anything at a CMD which it may do at a Hearing, including making a decision. The Legal Member was satisfied that the Tribunal had everything before it that it would require in order to make a decision having regard to the Overriding Objective.
2. The Application was brought timeously in terms of regulations 9(2) of the Deposit Regulations. The FTT considered that this application related to an undisclosed principle. The Respondent conceded that the Applicant would not have known any other landlord in terms of how the tenancy operated.

- 3a) In terms of Deposit Regulation 10 if the FTT is satisfied that the landlord did not comply with any duty detailed in Regulation 3 then the FTT must order a landlord to pay the tenant or tenants an amount not exceeding three times the amount of the tenancy deposit.
- b) The FTT was satisfied that the Respondent did not register the deposit with a deposit protection scheme as required by Regulation 3. This was accepted by the Respondent. However their position was that they had after lodging the monies on 29th May 2018 with an approved scheme realised that unallocated funds were held with the scheme. They believed that former staff had paid the deposit into the scheme but not allocated them to the applicant or the property. They considered this to be the explanation but they had no documentary proof of the deposit amount being paid to the Scheme at the relevant time. The document they lodged was printed on 14th October 2019 and showed £600 being unallocated funds to the Respondent. The FTT found that whilst this may be an explanation on balance it could not satisfy the obligations or negate the finding in fact that the Respondent did not register the tenancy deposit in connection with the property within 30 days of commencement.
4. The FTT was also satisfied that a deposit of £450 had been paid by the Applicants to the Respondent.
 5. The Respondent could not advise or produce evidence to establish that the relevant information was provided to the Applicant as required by Regulation 42 of the Deposit Regulations.
 6. If the FTT was satisfied a breach of the regulations had occurred the FTT had to make an order in terms of Regulation 10.
 7. In terms of Regulation 10 the FTT is obliged to make an order up to 3 times the deposit of the applicants to the respondent.
 8. When considering the Order and level of sanction the FTT must have regard to the severity of the breach and any mitigating factors.
 9. The deposit was unsecured throughout the tenancy until the Applicant had made investigations with all of the approved schemes. The period of unsecurity the Respondent did immediately paid the deposit into the scheme against the property on the 29th May 2018 when they were alerted giving the Applicant the protection of the scheme before the end of the Tenancy.
 10. In the case of *Jenson v Fappiano* 2015 G.W.D 4-89 in relation to the amount of such an Award under regulation 10 of the Regulations it was noted that a judicial analysis of the nature of the non-compliance was required and a value attached to reflect a sanction which was fair and proportionate and just given the circumstances.

11. It was further noted that the Sheriff said in said case that the value was not the starting point of three times the deposit minus the mitigating factors it was what was fair and proportionate in the exercise of balanced judicial discretion.
12. The Court of Session in Tenzin v Russell 2015 Hous. L.R 11 held that any payment in terms of Regulation 10 of the Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case.
13. The FTT was therefore of the view that an Award should be made in the middle end of the scale as the deposit had been unsecured for 19 months, there had been inconvenience and prejudice to the Applicant and the explanation given for the breach was one of oversight and possible unallocation of the monies. Accordingly in balancing the circumstances it found the Applicant entitled to an award of 2 times the deposit to the sum of £900.

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.

Karen Kirk

Legal Member/Chair

4 November 2019

Date