



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/22/1523

Re: Property at 15 Mentone Gardens, Edinburgh, EH9 2DJ (“the Property”)

Parties:

Miss Daisy Bradshaw, 2 New Street, Ford, Shrewsbury, SY5 9LN (“the Applicant”)

Mr Zee Ellahi, 12 Arboretum Road, Edinburgh, EH3 5PN (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted in favour of the Applicant in the sum of £2000.

Background

1. By application received in the period between 23rd May and 21st June 2022 and made under Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Rules”), the Applicant applied for an order in terms of Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”).
2. The Applicant lodged a copy of the tenancy agreement between the parties that commenced on 3rd November 2021 and ended on 30th April 2022, copy bank statements, correspondence between the parties, and information from the three approved tenancy deposit schemes stating that the deposit was not lodged.
3. Notification of the application and a Case Management Discussion was served upon the Respondent by Sheriff Officers on 5th August 2022.

The Case Management Discussion

4. A Case Management Discussion (“CMD”) took place by telephone conference on 20th September 2022. The Applicant was in attendance. The Respondent was not in attendance.
5. The Tribunal considered the terms of Rule 29. The Tribunal determined that the Respondent had been given reasonable notice of the time and date of the CMD and that the requirements of Rule 17(2) had been satisfied and it was appropriate to proceed with the application in the absence of the Respondent.
6. The Applicant said she paid a tenancy deposit of £750 to the Respondent on 3rd November 2021, the date the tenancy commenced, as required by clause 10 of the tenancy agreement.
7. The Respondent gave notice to the Applicant that he was terminating the tenancy by text message, giving only three weeks’ notice. The Applicant said she requested return of her deposit, but the Respondent said he was retaining it to pay for a deep clean of the Property, a replacement mattress, and a change of lock, which added up to the sum of £1748.97.
8. At the end of the tenancy, the Applicant made enquiries of the three approved tenancy deposit schemes and discovered that her deposit had not been lodged.
9. Responding to questions from the Tribunal, the Applicant said the lock change was because the Respondent was selling the Property and had been asked to change the locks by the selling agent. It was her position that this was not the responsibility of the tenants. It was her position that a deep clean was not required, nor was a replacement mattress required. She would have challenged all these items if the deposit had been lodged and she had had an opportunity to make representations to a tenancy deposit scheme.
10. Responding to questions from the Tribunal, the Applicant said she was unsure whether the Respondent let other properties. He had let the Property before, as he mentioned that when she was viewing the Property.
11. During discussions about the amount of any award to be made, the Applicant said she appreciated that three times the tenancy deposit was usually reserved for the most serious of cases. She submitted that one times the tenancy deposit may be appropriate.
12. The Tribunal made a decision to award a sum of £1000 to the Applicant.
13. Following the CMD, the Tribunal became aware that there had been a previous Tribunal decision – FTS/HPC/PR/20/1272 – involving the same Respondent and the same address, whereby the Respondent had failed to place a tenant’s deposit in an approved tenancy deposit scheme. In fact, the Tribunal in both cases was made up of the same Legal Member, however, the Member did not recall the earlier case at the time of the CMD.

14. The Tribunal decided to review its decision at its own instance and a review decision is issued together with this decision, setting aside the decision dated 20th September 2022.

Findings in Fact and Law

- 15.
- (i) The parties entered into a tenancy agreement in respect of the Property that commenced on 3rd November 2021 and ended on 30th April 2022.
 - (ii) A tenancy deposit of £750 was paid to the Respondent by the Applicant at the commencement of the tenancy.
 - (iii) The deposit was not lodged with an approved tenancy deposit scheme within 30 days of the commencement of the tenancy.
 - (iv) The deposit remained unprotected throughout the duration of the tenancy.
 - (v) The Respondent has breached Regulation 3 by failing to pay the deposit into an approved tenancy deposit scheme timeously.
 - (vi) The Respondent has previously breached Regulation 3 by failing to pay the deposit of another tenant at the same address into an approved tenancy deposit scheme timeously.

Reasons for Decision

16. The Applicant's deposit was not lodged with an approved tenancy deposit scheme as required by Regulation 3. The deposit remained unprotected throughout the duration of the tenancy, which was five months. This deprived both parties of the opportunity of dispute resolution through an approved tenancy deposit scheme at the end of the tenancy.
17. The Regulations were put in place to ensure compliance with the tenancy deposit scheme, and to provide the benefit of dispute resolution for parties. The Tribunal considers that its discretion in making an award requires to be exercised in the manner set out in the case *Jenson v Fappiano (Sheriff Court (Lothian and Borders) (Edinburgh) 28 January 2015* by ensuring that it is fair and just, proportionate and informed by taking into account the particular circumstances of the case. The Tribunal must consider the facts of each case appropriately.
18. The Tribunal took guidance from the decision of the Upper Tribunal UTS/AP/19/0020 which states: '*Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of*

fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals.'

19. The Tribunal considered this to be a case at the more serious end of the scale, given that a previous Tribunal had made a decision in case FTS/HPC/PR/20/1272, in respect of the Respondent's failure to lodge a tenancy deposit in an approved tenancy deposit scheme for another tenant at the same address. The Respondent has committed repeated breaches against at least two tenants and has deliberately failed to observe his responsibilities.
20. The Tribunal noted that the Respondent had not taken the correct steps to terminate the tenancy, having given only three weeks' notice by text message. This non-compliance with the relevant legislation tends to suggest that the Respondent does not take his duties as a landlord seriously.
21. The Tribunal took into account that the tenancy agreement states that the tenancy deposit will be lodged with an approved tenancy deposit scheme, and that it goes further, by stating the name of the scheme. This shows that the Respondent inserted the name of the scheme and could not claim to be unaware of the requirements of the Regulations, which are set out in the tenancy agreement. The Applicant was entitled to have confidence that the Respondent would comply with his duties as a landlord.
22. As the Respondent was not in attendance at the CMD, and no representations were made in respect of the decision to review the original decision, no mitigating factors were put forward in his defence.
23. Taking all the circumstances into account, the Tribunal decided it would be fair and just to award a sum of £2000 to the Applicant.

Decision

24. The Tribunal grants an order against the Respondent for payment to the Applicant of the sum of £2000 in terms of Regulation 10(a) of The Tenancy Deposit Schemes (Scotland) Regulations 2011.

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.

H Forbes

Legal Member/Chair

17th October 2022

Date