



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/21/2334

Re: 5 Castle View, Wishaw ML2 9PQ ("Property")

Parties:

Stuart Anderson, 59 Gatside Road, Wishaw ML2 7SB ("Applicant")

Thomas McCabe, Ashlea, Ashgillhead Road, Larkhall ML9 3AF ("Respondent")

Tribunal Members :

Joan Devine (Legal Member) and Tony Cain (Ordinary Member)

Decision :

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment of £1,250 should be made.

Background

1. The Applicant made an application in Form G ("Application") under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("Rules") claiming that the Respondent had failed to lodge a tenancy deposit in an appropriate scheme in breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("2011 Regulations"). The Application as originally drafted was submitted on 27 September 2021. The Application (as amended) was submitted on 13 October 2021 ("Application").
2. A CMD took place on 7 December 2021. Both the Applicant and the Respondent were in attendance. Reference is made to the note of the CMD. At the CMD the Tribunal considered that the issues which it required to be resolved were :
 - the date on which the tenancy terminated;
 - whether or not the Application had been made timeously in terms of the 2011 Regulations
 - the amount paid by the Applicant to the Respondent in respect of a deposit and the date on which the payment or payments were made

- if the Application was timeous, whether the Respondent had failed to comply with a duty in terms of Regulation 3 of the 2011 Regulations and
 - if there had been a failure on the part of the Respondent, the amount payable in terms of Regulation 10 of the 2011 Regulations.
3. A direction was issued and a Hearing was fixed for 16 February 2022 to take place by webex.

Productions

4. The documents produced to the Tribunal by the Applicant were:
- screenshots of text messages some of which were dated 25 and 26 March 2018;
 - a form of tenancy agreement dated 23 March 2018;
 - undated email from Letting Protection saying that they were not currently protecting and had never protected a deposit for the Applicant at the Property; email from Safe Deposits Scotland dated 9 July 2021 saying that they were unable to locate a deposit on their system for the Applicant at the Property; email dated 19 July 2021 from My Deposits saying that they were unable to find a protection for the Applicant at the Property;
 - copy Notice to Leave addressed to the Applicant dated 11 June 2011 which narrated that the ground of eviction was "Your landlord intends to live in the Let Property";
 - photographs of the interior of the Property; and
 - screenshots of text messages.
5. The documents produced to the Tribunal by the Respondent were:
- photographs of the Property;
 - written representations contained in emails dated 2 November 2021, 24 January and 10 February 2022;
 - screenshots of text messages; and
 - written statement of Sherridan Houlistan

Hearing

6. A Hearing took place on 16 February 2022 at 10am by webex. Both the Applicant and the Respondent were in attendance.
7. The Applicant told the Tribunal that he took up occupancy of the Property on 23 March 2018 and vacated the Property on 8 July 2021. As regards the deposit, the Applicant told the Tribunal that the rent was £550 per month but he paid £600 per month thereby making a contribution of £50 per month to the deposit. He said that he paid the rent around the 23rd of each month as that was when he was paid. He said that he paid the rent in cash to the Respondent. He said that his first payment was on 23 March 2018 when he paid £600. He said that he paid £600 per month for 10 months then started paying £550 per month. He said he paid a deposit of £500 in total.
8. The Tribunal noted the copy text exchanges that had been produced and in particular an undated exchange in which the Applicant asked the Respondent whether the rent was *"five fifty or six hundred"* and the Respondent replied *"£550 that's you paid a £500 deposit"*. The Applicant replied *"You do know we been in house a year"* and the Respondent replied *"Yes when I looked you paid 10 payments of £600 and 2 at £550 is that right that gives you deposit of £500"*. The Tribunal asked the Applicant when this exchange took place. He said it was around March 2019.
9. The Tribunal asked the Applicant if he received rent statements. He said that he did not. The Tribunal asked the Applicant if his deposit had been returned. He said that it had not.
10. The Tribunal asked the Respondent if he agreed the date on which the applicant vacated the Property as being 8 July 2021. He said he did not and that it was 6 July 2021. The Tribunal noted the communications from the deposit scheme administrators and asked the Respondent if he disputed that no deposit had been lodged with a scheme administrator in respect of the Applicant's tenancy of the Property. He said that he did not dispute that. The Tribunal referred the Respondent to the text messages narrated in paragraph 8 of this Decision. He agreed that they took place in March 2019.
11. The Tribunal asked the Respondent if he kept a record of rent due and rent paid. He said that he did not. The Tribunal asked the Respondent to take them through the rent payments made by the Applicant. He said that the first rental payment of £550 was paid to him by the Applicant's employer. Thereafter he said that payments made were :

- £600 on 27 April 2018
- £600 on 27 May 2018
- £600 on 28 June 2018
- £500 in July 2018
- £500 in August 2018
- £500 in September 2018
- £600 in October 2018
- £600 in November 2018
- £1100 in December 2018 to cover December 2018 and January 2019
- £600 in February 2019
- £500 in March 2019

The Respondent said that the payments were all made by cash aside from April, May and June 2018.

12. The Tribunal referred the Respondent to the text exchanges in March 2019 where he said that 10 payments of £600 had been made and that the deposit was £500. He said that at that time payments had become erratic and he could not keep track of what had been paid so he and the Applicant agreed to proceed on the basis that a deposit of £500 had been paid although, in reality, it had not. He said that the total deposit paid was £300. The Tribunal noted that in the text exchanges the Respondent said "*Yes when I looked you paid 10 payments of £600 and 2 at £550 is that right that gives you deposit of £500*". The Tribunal asked what the Respondent had "*looked*" at. He said, "*I mean, in my head.*" The Tribunal asked if the rent was paid in full during the period March 2018 to March 2019 or whether there were arrears for that period. He said that there were no arrears for that period.

13. The Tribunal asked the Respondent if he had ever rented a property before. He said that he had not and that the Property had been his home before he rented it to the Applicant. He said that he had not registered as a landlord until the Applicant complained about his lack of registration. The Respondent said that he was aware of the tenancy deposit scheme but he did not know that he could "*pay it up*". The Tribunal asked the Respondent why he did not lodge £300 in the scheme. He said he did not know that he could.

Findings in Fact

The Tribunal made the following findings in fact :

1. The Applicant and the Respondent had entered into a tenancy agreement dated 23 March 2018.
2. The tenancy commenced on 23 March 2018.
3. The Applicant vacated the Property on or about 8 July 2021.
4. The Application was made less than 3 months after the tenancy ended.
5. The Applicant paid to the Respondent a deposit of £500 by 10 instalments of £50 paid between March 2018 and March 2019.
6. The deposit was not paid to the administrator of an approved scheme in compliance with Regulation 3 of the 2011 Regulations.

Reasons for the Decision

14. Regulation 10 of the 2011 Regulations states that if satisfied that the landlord did not comply with the duty in Regulation 3 to pay a deposit to the scheme administrator of an approved scheme within 30 working days of the receipt of each instalment of a tenancy deposit, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. The Tribunal was satisfied that the Respondent did not lodge the deposit in an approved scheme as required by the 2011 Regulations. This was not disputed by the Respondent.
15. The dispute between the Parties was as to the amount paid as a deposit. The Applicant's evidence was that 10 payments of £50 had been made by way of deposit. The Respondent's evidence was that only 6 payments of £50 had been made by way of deposit. The Applicant had produced text messages from the Respondent in which he stated that 10 payments had been made and that the deposit paid was £500. The Respondent did not keep any record of payments made by the Applicant. He said that he had difficulty keeping track of what had been paid but that there were no arrears of rent for the period March 2018 to March 2019. The Respondent said that he had kept his records "in his head". The only documentation produced to support the submissions for the parties was copy text messages. The Tribunal determined that, on the balance of probabilities, the Applicant paid a deposit totalling £500.
16. The Tribunal considered all of the circumstances presented to it and found it to be of significance that the deposit was not protected at any time. The

Respondent was aware of the need to protect a deposit but thought that as it had been received by instalments, it did not require to be protected. Ignorance of the terms of the 2011 Regulations is not an excuse for failure to comply. The Tribunal also took the view that the lack of record keeping by the Respondent was unhelpful. The Tribunal took the view that there was a reasonable expectation that a landlord would keep a record of payments due and made by a tenant. That had not happened in this case.

17. The amount to be awarded is a matter for the discretion of the Tribunal having regard to the factual matrix of the case before it. The Tribunal found that the breach of the 2011 Regulations was at the higher end of the scale and determined that the sanction should be 2.5 times the deposit being £1,250 in the particular facts and circumstances of this case.

Decision

The Tribunal granted an Order for payment of £1,250 in terms of Regulation 10(a) of the 2011 Regulations.

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.

J. D

**Joan Devine
Legal Member**

Date : 16 February 2022