

Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”) and Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/PR/20/1353

Re: Property at Flat 2/2, 76 Buccleuch Street, Glasgow, G3 6PG (“the Property”)

Parties:

**Mr Matthew Major, 7 Nichols Court, Dingwall, Ross-shire, IV15 9SW
 (“the Applicant”)**

**Mrs Reshna Begum, 28 Hawthorn Way, Cambuslang, Glasgow, G72 7AF
 (“the Respondent”)**

**Mr Moby Rahman and Mr Raju Rahman, 28 Hawthorn Way, Glasgow, G72 7AF
 (“the Respondent’s Representative”)**

Tribunal Member:

Ms. Susanne L. M. Tanner Q.C., Legal Member and Chair

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that an order must be made in terms of Regulation 10 of the 2011 Regulations requiring the Respondent to pay to the Applicant the sum of ONE HUNDRED AND FIFTY POUNDS (£150.00) Sterling

1. Procedural background

- 1.1. On 17 June 2020, the Applicant made an application (“the Application”) to the tribunal in terms of Rule 103 of the 2017 Rules, namely an application for an

order for payment where the landlord (Respondent) has failed to carry out duties in relation to tenancy deposits.

1.2. The Applicant attached to the Application:

1.2.1. A Private Residential Tenancy agreement;

1.2.2. A Deposit Protection Certificate from Safe Deposits Scotland DAN523443.

1.3. On 1 July 2020, the Application was considered by a legal member acting with the delegated power of the President. Further information was requested from the Applicant, namely, confirmation as to whether the tenancy had ended and if so, the date of termination of the tenancy and confirmation of when the deposit of £400.00 was paid to the Landlord, with evidence to support the payment date.

1.4. On 2 July 2020, the Applicant responded and stated that the tenancy had ended on 1 June 2020. He stated that he had paid his deposit to Mr Mohammed Rahman, whom he believed to be a relative of the Respondent. He stated that all of his dealings were with “Moby” and another individual whom he believed to be his brother Karim. He attached a screen shot of his bank account showing a payment to Mr Rahman on 5 September 2019. He also attached screen shots of messages confirming date of payment on 4 September 2019.

1.5. On 8 July 2020, the Application was accepted for determination.

1.6. On 31 July 2020, the tribunal notified the parties that the Application had been referred to the tribunal and that a Case Management Discussion (“CMD”) teleconference had been fixed for 21 August 2020 at 1130 which both parties were required to attend. Parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application. Parties were advised that if they did not attend the CMD, this would not stop a decision or order from being made by the tribunal if the tribunal considered that it has sufficient information before it to do so and the procedure has been fair. The Respondent was invited to submit any written representations she wished by 14 August 2020. The Application paperwork and notification of the teleconference was served on the Respondent by Sheriff Officers on 3 August 2020.

1.7. On 6 August 2020, the tribunal issued a Direction requiring both parties to comply with the orders therein.

1.8. On 13 August 2020, the tribunal received notification that the Respondent had appointed a Representative, her son Mr Raju Rahman. He submitted a Direction response in which it was accepted that the Applicant's deposit was lodged late.

1.9. On 12 August 2020, the Applicant submitted a request to amend the Application, Section 7(b) to state: "The respondent failed to lodge the deposit into a deposit protection scheme within the 30 day period. The £400 deposit was paid by myself, the applicant, to parties of the respondent on 5th September 2020 (should be 2019) and was not paid into a deposit protection scheme (Safe Deposits Scotland) until 20 November 2020 (should be 2019); and Section 7(c): I am seeking £1200 as a payment order under rule 2013 of this application.

2. Case Management Discussion ("CMD") – 21 August 2020 at 1130h – by teleconference

2.1. The Applicant did not attend the teleconference. The tribunal clerk attempted to contact him by telephone. The call went straight to voicemail. The Applicant in the related Application, Mr Daniel Tebano, advised that he had been in communication with the Applicant the day before and had expected him to dial in. He did not know why he had not attended.

2.2. Mr Moby Rahman appeared as a Representative for the Respondent. He notified the tribunal that he was appearing today on behalf of his mother and that his brother Mr Raju Rahman, who had submitted the written response to the Direction was also a representative but was not present today. He stated that Mr Raju Rahman was available by email if further information was required during the CMD.

2.3. The tribunal chair was satisfied that the requirements of Rule 24(1) regarding the giving of notice of a hearing had been duly complied with and proceeded with the Application upon the representations of the party present and all the material before it.

2.4. The tribunal chair explained the nature and purpose of the CMD.

2.5. Respondent's Representative's submissions

2.6. Mr Rahman stated that his brother Mr Raju Rahman dealt with Safe Deposits Scotland and had the log in details. He stated that the Applicant's money was paid into the scheme on 20 November 2019. He stated that he does not have the log in details for the scheme. He stated that Mr Raju Rahman had made

enquiries with Safe deposits Scotland and they had confirmed that the deposit was paid on 20 November 2019.

2.7. Mr Rahman stated that he did provide the Deposit Protection Certificate after the deposit was lodged but he was not aware that they had to issue any other information in a separate document in addition to that. He stated that this was his mother's only property. He stated that when they put the money into the scheme, Mr Major knew that the money was paid in slightly late and they explained the situation to him. He stated that the Mr Major was aware of the amount of deposit, the date it was paid in and the scheme from the Deposit Protection Certificate which was issued.

2.8. By way of explanation for the late lodging, Mr Rahman stated that at that time in September 2019, his mum was unwell. She has heart problems. She has medications for her heart rate. He stated that his brother Raju and he were trying to help and support her with the management of the tenancy. He stated that he thought that Raju had paid it in and there was a miscommunication between them. Once they realised money was not paid into the scheme we paid it. He stated that the money was secure in a bank account until it was paid in. He stated that the Applicant did get his full money back. They apologise that they were late. There was oversight. That was missed. He is not saying that the illness was the main part of it. There was a miscommunication. He and his brother do not have any other rental properties.

2.9. Mr Rahman stated that he would like it to be taken into account that the money was lodged late but it was paid into a scheme. He stated that in his submission there is no loss to the Applicant as he received an agreed balance of his deposit back via the scheme at the end of the tenancy. He stated that he had email screen shots which could confirm this.

2.10. Adjournment

2.11. The tribunal adjourned in order that both parties could produce the documents referred to in their submissions; and in order that the legal member could deliberate thereafter.

2.12. The Respondent produced two screen shots from My Deposits Scotland to confirm that the whole deposit was paid back to the Applicant after the end of the tenancy.

2.13. Following the adjournment, the tribunal reached a decision on the Application.

3. Findings in Fact

- 3.1. The Applicant and the Respondent entered into a private residential tenancy agreement for the Property which started on 1 September 2019.
- 3.2. On 5 September 2019 the Applicant paid a deposit of £400.00 to a relative of the Respondent as required in the tenancy agreement.
- 3.3. The Applicant did not receive any reply from Mr Moby Rahman to his email.
- 3.4. The deposit was paid into Safe Deposits Scotland on 20 November 2020 and it should have been paid on 13 October 2020, therefore it was 38 days late.
- 3.5. The reason for the late lodging was oversight on the part of Mr Moby Rahman and his brother Mr Raju Rahman, who dealt with some tenancy matters on behalf of their mother, the Respondent.
- 3.6. A Deposit Protection Certificate was issued to the Applicant from the tenancy deposit protection scheme.
- 3.7. The prescribed information in terms of Regulation 42 of the Regulations was not issued to the Applicant by the Respondent at any time.
- 3.8. After the end of the tenancy, the Applicant applied to the tenancy deposit protection scheme for refund of his deposit.
- 3.9. A part deposit was refunded to the Applicant via the tenancy deposit protection scheme, as agreed between the parties.
- 3.10. Mr Moby Rahman apologised during the tribunal proceedings for the late lodging and failure to provide the prescribed information.

4. Discussion

- 4.1. The tribunal took account of the Applicants' written submissions; and the Respondents' written and oral submissions.
- 4.2. In assessing the appropriate amount for a payment order, the tribunal had regard to the fact that the Applicant's deposit was unprotected for a relatively short period at the start of the tenancy and that the deposit had been protected

from 20 November 2019 until the end of the tenancy. The tribunal also took account of the fact that the prescribed information had not been provided to the Applicant at any time. The tribunal took account of the Respondent's Representative's position that the failure had been due to oversight and the matter had been rectified once the failure was recognised.

4.3. For the reasons outlined and on the basis of the findings in fact, the tribunal decided to make an order for payment by the Respondent to the Applicant of the sum of £150.00. That sum was considered to be reasonable in all of the circumstances.

4.4. The tribunal chair informed the parties that the Payment Order could be enforced by the Applicant against the Respondent after the expiry of the permission to appeal period.

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.

21 August 2020

**Ms. Susanne L M Tanner Q.C.
Legal Member/Chair**