



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

Chamber Ref: FTS/HPC/PR/20/1098

Re: Property at 15 Laurelbank, Coatbridge, ML5 2DE (“the Property”)

Parties:

Miss Jiaxi Claire Lee, 64 Gallants Farm Road, Hertfordshire, EN4 8ER (“the Applicant”)

Mr William Andrew, Ms Claire Andrew, ADDRESS UNKNOWN, ADDRESS UNKNOWN; (“the Respondents”)

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 £ 1270 should be made in favour of the Applicant.

Background

1. By application dated 5 May 2020, the Applicant seeks an order in terms of Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (the 2011 Regulations). An email from Safe Deposits Scotland was lodged in support of the application.
2. The Tribunal attempted to serve a copy of the application of the Respondent by Sheriff Officer at the address specified in both the Scottish Landlord Register and the deposit certificate from Safe Deposit Scotland. This was unsuccessful as the occupant of the property advised that the Respondents had not lived there for several years. The application was therefore served by advertisement on the Tribunal website from 14 August 2020 until 17 September 2020. Parties were advised that a case management discussion (“CMD”) would take place by telephone conference call on 17 September 2020 at 10am.
3. The application called for a CMD at 10am on 17 September 2020 at 10am. The Applicant participated. The Respondents did not participate. The Applicant

advised the Legal Member that the tenancy had been a joint tenancy, with her partner. They had each paid one half of the deposit. She also advised that the tenancy agreement was signed at the letting agent's office. The deposit was paid by bank transfer. She confirmed that she had a copy of the agreement and could also provide evidence of the transfer of funds from her bank account.

4. The Legal Member determined that the CMD should be continued for the Applicant to provide a copy of the tenancy agreement, a copy of the notice given by the Applicant to terminate the tenancy, evidence from Safe Deposit Scotland (SDS) of the deposit being lodged and evidence of payment of the deposit. The Applicant was also asked to provide evidence that she was entitled to seek an order in relation to the whole deposit, as the tenancy had been a joint tenancy with each tenant paying half.
5. On 21 October 2020, the Applicant submitted a copy of an email to the letting agent dated 15 April 2020, giving 28 days' notice to terminate the tenancy, and an email from SDS which states that the tenancy started on 10 May 2019 and that the deposit was received on 28 April 2020. A certificate from SDS was also lodged which states that a deposit of £635 was received on 28 April 2020. The Applicant also lodged bank statements and advised that she had mislaid her copy of the tenancy agreement. She had asked the letting agent for a copy, but they had failed to provide this. She lodged an email from her partner, Justin Ng, which confirms that the Applicant is authorised to pursue the application on his behalf.
6. The application called for a further CMD on 5 November 2020 at 10am. The Respondent was notified by advertisement on the Tribunal website, as their address remains unknown. The Applicant participated. The Respondents did not participate.

Case Management Discussion (CMD)

7. Ms Lee advised the Legal Member that the tenancy started on 10 May 2019. It was a joint tenancy with her partner, Justin Edward Ng Yan Ming. The rent was £450 per month. They signed the tenancy agreement at the letting agent's office on 10 May 2019 and collected the keys. Her partner paid the first month's rent and the deposit of £635 by debit card. She referred the Legal Member to her bank statement. This shows transfers on 11 May 2019 of £317.50 (half of the deposit) and £225 (half of the first month's rent). She advised that these were payments to her partners' account. She also referred to her partners bank statements which shows a debit card payment on 10 May 2019 of £935 to Property Angels. She advised that this relates to £635 for the deposit and £300 for rent, as they had previously paid a holding deposit of £150 which was then deducted from the first month's rent. The Applicant gave notice on 15 April 2020 and the tenancy ended on 13 May 2020. Ms Lee advised the Legal Member that she was given a paper copy of the tenancy agreement but has mislaid it. She has contacted the letting agent by email and telephone to ask for a copy, but they have not provided this.

8. Ms Lee advised the Legal Member that she cannot recall any reference in the tenancy agreement to a tenancy deposit scheme, but the letting agent told them the deposit would be lodged with SDS. It was their first experience of renting property so did not know what to expect. After sending the email giving notice to terminate the tenancy, they received an email from SDS. They checked the portal and noted that their deposit had not been lodged until 28 April 2020. They sent an email to the letting agent to ask for an explanation but did not get a response. She has therefore been given no explanation for the late lodging of the deposit. At the conclusion of the tenancy they received part of their deposit back from SDS, as the Respondent made a claim in relation to repairs issues.

Findings in Fact

9. The Applicant is the former tenant of the property in terms of a tenancy which started on 10 May 2019.
10. The Respondents are the former landlords of the property.
11. The Applicant and the joint tenant paid a deposit of £635 on 10 May 2019.
12. The tenancy terminated on 13 May 2020.
13. The deposit was lodged by the Respondents in an approved tenancy deposit scheme on 28 April 2020.

Reasons for Decision

14. 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.

15. The Legal Member is satisfied that the Applicant’s tenancy is a relevant tenancy in terms of the 2011 Regulations, that a deposit of £635 was paid and that it

was not lodged in an approved deposit scheme until 28 April 2020, some 11 months after the beginning of the tenancy. The Legal Member also notes that the application was lodged with the Tribunal on 5 May 2020, before the tenancy came to an end. The Applicant has therefore complied with Regulation (9)(2) of the 2011 Regulations, which requires an application to be lodged no later than 3 months after the tenancy had ended.

16. 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 Legal Member therefore determines that an order must be made in favour of the Applicant.
17. The Legal Member noted that the tenancy deposit was not secured in an approved scheme for eleven months and was only secured for the last 2 weeks of the tenancy. It was not lodged until the Applicant gave notice to terminate the tenancy. The Applicant made enquiries and was not provided with an explanation for the Landlord’s failure. The Respondent has not participated in the process and has provided no explanation or mitigation. However, the Legal Member notes that the deposit had been secured by the time the tenancy ended which allowed the Applicant to seek repayment of the deposit through SDS.
18. Having considered the submissions made by both parties, the Legal Member is satisfied that an order for payment of the sum of £1270, being twice the deposit, should be made.

Decision

19. The Tribunal determines that an order for payment of the sum of £1270 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.

