



**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/18/1419

Re: Property at 0/1 287 Onslow Drive, Glasgow, G31 2QG (“the Property”)

Parties:

Miss Abigail Dryburgh, 1/1 1 Porter Street, Glasgow, G51 1QE (“the Applicant”)

Mr Naranjan Kaur, Mr Bhagwan Singh, 57 Craw Road, Paisley, PA2 6AE (“the Respondents”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

This is an application of 7th June 2018 brought in terms of Rule 103 (Application for order for payment where landlord has not paid the deposit into an approved scheme) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended. The application is made under Regulation 9 of the *Tenancy Deposit Schemes (Scotland) Regulations 2011* (“the 2011 Regulations”).

The Applicant provided with her application copies of the tenancy agreement, tenancy deposit receipt, confirmation of her flatmate’s residence in the Property, notice to quit and acknowledgement thereof, and information and correspondence from the three deposit schemes.

The Case Management Discussion

A continued Case Management Discussion was held on 15th October 2018 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant appeared, accompanied by her former flatmate at the Property, Connor Clark. The Respondents appeared, and were represented by Mr Iqbal, letting agent.

A preliminary matter had arisen at the previous Case Management Discussion of 18th September 2018 with respect to the date of this application. The application form bore to be dated 7th August 2018. However, it was received and acknowledged by the Tribunal on 11th June 2018.

The Applicant apologised and advised that she had written "08" for the month in error, and it should have read "06". She also advised that she had left the Property in late March 2018, and accordingly this application was timeous.

After considering the Applicant's position, Mr Iqbal indicated that he did not intend to contest the timeousness of this application.

Mr Iqbal also confirmed that he accepted on behalf of his clients that the tenancy deposit had not been lodged in accordance with the Regulations, and that accordingly they were in breach of them.

However, he sought to persuade the Tribunal to limit the award of compensation it would make for the following reasons.

He provided a copy from his files of the application form dated 11th March 2016 to the Tenancy deposit scheme which was timeously made, as the tenancy commenced on 22nd February 2016. He also provided a copy of the attached cheque for the deposit payable to the deposit scheme and also dated 11th March 2016.

The Respondents' letting agents had assumed that the cheque had been cashed by the tenancy deposit scheme when the application was recorded. Unusually, in this case the scheme has confirmed that the tenancy was recorded in the usual way, but that the deposit money itself was not paid to the scheme until 4th June 2018.

Mr Iqbal explained that when his firm was first advised by the Applicant that the money had not been lodged in May 2018, his firm carried out checks, realised that the original cheque had not been cashed, and thereafter transferred the deposit amount to the scheme.

Mr Iqbal could not explain why the original cheque had not been cashed, nor what had happened to it or where it had apparently gone astray. He also accepted that his firm should have realised that the cheque had not been encashed, and also should have sent information to the Applicant confirming that the deposit had been lodged.

He further explained that a former member of his staff responsible for this work at that time had subsequently left his firm on bad terms, and accordingly he was unable to find out why these steps had not been undertaken as they should have been.

The Applicant was not in a position to dispute what Mr Iqbal stated in this regard, but she noted that in her view his firm had a long history of poor communications with her, and of failing to reply to enquiries or complaints. She did accept that she only made checks regarding the lodging of the tenancy deposit after the tenancy ended in about May 2018, which was when she first raised the issue with the Respondents' letting agents.

The Applicant felt she had been poorly treated throughout by the Respondents' letting agents, which fact should be reflected in the award of compensation from the Tribunal, but was content to leave the amount awarded to the Tribunals' discretion.

Reasons for Decision

It was accepted by the Respondents that this application was brought timeously in terms of regulation 9(2) of the 2011 Regulations.

Regulation 3 of the 2011 Regulations (which came into force on 7th March 2011) provides as follows:

- “(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.”

The Respondents as landlords were required to pay the deposit into an approved scheme. They accept that they failed to do so, under explanation noted above that their letting agent did send a cheque to the scheme with the money, but that this cheque appears at some point between sending and receipt to have gone astray and not been encashed by the scheme at the time of notification.

Regulation 10 of the 2011 Regulations provides as follows:

- “If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal -
- (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and
 - (b) may, as the First-tier Tribunal considers appropriate in the circumstances of the application, order the landlord to—
 - (i) pay the tenancy deposit to an approved scheme; or
 - (ii) provide the tenant with the information required under regulation 42.”

The Tribunal is satisfied that the Respondents did not comply with their duty under regulation 3, and accordingly it must order the Respondents to pay the Applicant an amount not exceeding three times the amount of the tenancy deposit.

In the case of *Jenson v Fappiano* 2015 G.W.D 4-89, Sheriff Welsh opined in relation to regulation 10 of the 2011 Regulations that there had to be a judicial assay of the nature of the non-compliance in the circumstances of the case and a value attached thereto which sounded in sanction, and that there should be a fair, proportionate and just sanction in the circumstances of the case. With that assessment the Tribunal respectfully agrees.

In the case of *Tenzin v Russell* 2015 Hous. L. R. 11, an Extra Division of the Inner House of the Court of Session confirmed that the amount of any award in respect of regulation 10(a) of the 2011 Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case.

In determining what a fair, proportionate and just sanction in the circumstances of this application should be, the Tribunal took account of the facts that the Respondents' letting agents do appear to have provided a cheque which they appear to have sent timeously with the appropriate application form to the scheme. The Tribunal also took account of the fact that when they first became aware that the deposit had not been protected, that they within a relatively short space of time (about a month) transferred the deposit amount to the scheme.

Balanced against that is the fact that as the Respondents' letting agent candidly accepted, his firm should have realised from its accounting procedures that its original cheque had not been cashed, and should also have sent the required information regarding the lodging of the deposit to the Applicant.

The Tribunal accepts that these unusual circumstances do provide some mitigation in respect of the sum to be awarded in the exercise of its judicial discretion.

Balancing these various competing factors in an effort to determine a fair, proportionate and just sanction in the circumstances of this application, the Tribunal considers that the sum of £862.50 (one and a half times the amount of the tenancy deposit) is an appropriate sanction to impose.

Decision

For the foregoing reasons, the Tribunal orders the Respondents in respect of their breach of Regulation 3 of the 2011 Regulations to make payment to the Applicant of the sum of £862.50 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.

Neil Kinnear

Legal Member/Chair

Date

15/10/18