

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/19/2085

Re: Property at 3/2, 4 Garturk Street, Glasgow, G42 8JD ("the Property")

Parties:

Shakra Farnaz, Chohdary Farrukh, c/o Govanhill Law Centre, Samaritan House, 79 Coplaw Street, Glasgow, G42 7JG ("the Applicant")

Mr Akhtar Ali, c/o GPS Glasgow, 467 Victoria Road, Glasgow, G42 8RL ("the Respondent")

Tribunal Members:

Alison Kelly (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 £1350 in terms of Regulation 10(a) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Regulations") should be made.

Background

On 4th July 2019, the Applicant's agent, Govanhill Law Centre, lodged an application under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Chamber Rules") alleging that the Respondent had entered in to a tenancy agreement with the Applicants for the property at Flat 3/2, 4 Garturk Street, Glasgow, G42 8JD. The Respondent had taken a deposit of £450, but had not lodged it in a Tenancy Deposit Scheme, as he was obliged to do in terms of the Regulations. The tenancy had ended on 12th April 2019, but the Respondent had failed to return the deposit to the Applicants.

In response, the Respondent's agent, Mr Bashir of GPS Legal and Estate, lodged a letter with the Tribunal. The letter was dated 19th August 2019. In the letter he

explained that the Applicants had vacated the property without giving notice, and that they had caused damage, and that he had informed the Applicants that the deposit could not be returned until the property had been reinstated. He attached invoices for repairs and photos to show the condition of the property.

He went on to explain that the deposit had not been lodged in a scheme as, when the tenancy commenced, the Respondent's landlord registration application was in process, and the deposit could not be lodged in a scheme without the landlord registration number.

Case Management Discussion

The Case Management Discussion was scheduled for 6th September 2019. The Applicants were not present, but were represented by Sally Mair, Trainee Solicitor with Govanhill Law Centre. The Respondent was present, and was represented by Mr Bashir.

The Chairperson asked everyone to introduce himself or herself. She explained the purpose of a Case Management Discussion in terms of Rule 17 of the Chamber Rules.

The Chairperson asked Miss Mair to present the case for the Applicants. Miss Mair explained that the parties had entered in to a tenancy for the property. Said tenancy commenced on 15th November 2018 and ended on 12th April 2019. The Respondent took a deposit of £450, but did not place it in a tenancy deposit scheme, which was in breach of Regulation 3 of the Regulations. In terms of Regulation 10, she sought an award of three times the amount of the deposit.

Mr Bashir confirmed that the Applicant accepted that he had taken a deposit of £450, accepted the dates of commencement and ending of the tenancy, and accepted that the deposit had not been placed in a Scheme.

The Chairperson advised him that the case being dealt with today was purely and simply in relation the question of lodging the deposit in a scheme, and that anything he had to say in relation to damage to the property was irrelevant. She asked him to confirm the reason why the deposit had not been lodged in a scheme. Mr Bashir said that at the time the deposit was taken the Respondent's application for Landlord Registration was in progress, but as there was no landlord registration number the deposit could not be lodged. He had checked this with the scheme.

The Chairperson asked how long the respondent had owned the property. Mr Bashir said he had owned it for around 7 years. The Chairperson asked for how long it had been rented out. Mr Bashir confirmed it had been rented out for the whole of that period. The Chairperson asked why the Respondent did not have landlord registration in place. Mr Bashir said that the Respondent's previous registration had been revoked and when the Chairperson asked why, he confirmed that it was because the Respondent had properties which did not meet the tolerable standard.

The Chairperson asked Mr Bashir to confirm from his letter his position that the deposit would have been returned if the Respondent had not considered that repairs needed to be carried out. He said that that was the case.

The Chairperson asked if the registration was now in place and Mr Bashir confirmed that it had not yet been approved.

The Chairperson pointed out that perhaps the better course of action would have been to not take a deposit. Mr Bashir confirmed that the Respondent has other rental properties, and since receiving this application he has stopped taking deposits and has returned others that he has taken. He had not returned the one in this case as he considered that repairs needed to be carried out.

Miss Mair asked for an award to be made at the higher end of the scale given the circumstances.

The Chairperson adjourned for a short period to consider matters. The parties were then asked to return and the Chairperson gave her decision.

Findings In Fact

1. The parties entered in to a tenancy agreement for the property at 3/2, 4 Gartuck Street, Glasgow;
2. the tenancy commencement on 15th November 2018 and ended on 12th April 2019;
3. the Respondent took a deposit of £450 from the Applicants;
4. the Respondent did not place the deposit in an approved tenancy Deposit Scheme.

Reasons For Decision

The Respondent did not comply with the requirements of Regulation 3 of the Regulations.

The Respondent clearly admitted the breach, although he did provide a reason.

Regulation 10 of the Regulations is a regulatory sanction to punish the landlord for non-compliance with the rules. The point of the Regulations was to provide a dispute resolution process, and to protect deposits.

The Tribunal, when considering the sanction to impose, should exercise discretion in the manner set out in the case of *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 in to account the particular circumstances of the case.

The Tribunal considered all matters, but could find no mitigation whatsoever to allow it to award anything other than the maximum amount.

The Respondent was an unregistered landlord. He was unregistered because his registration had been revoked. The Applicants were in a situation where an unregistered landlord held their money. They did not have the protection of a Tenancy Deposit Scheme.

Despite telling the Tribunal that the Respondent had returned other deposits and stopped taking new ones after receiving this application, the Respondent had not seen fit to return the deposit to the Applicants. This leaves the Applicants without their deposit and with no means of adjudication regarding the Respondent's allegations of damage.

In all the circumstances it appears that the Respondent had no regard whatsoever for the Regulations and their purpose.

The Chairperson could find no reason to award anything less than the maximum sanction.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

Alison Kelly

Legal Member/Chair

6/9/19

Date