



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/21/1904

Property : 2/2, 66 Young Terrace, Glasgow G21 4LL ("Property")

Parties:

Rachel Lewis, 2/2, 66 Young Terrace, Glasgow G21 4LL ("Applicant")

Kieran Woods, present whereabouts unknown ("Respondent")

Tribunal Members :

Joan Devine (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision :

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment of £1,350 should be made.

Background

1. The Applicant made an application in Form G ("Application") dated 8 August 2021 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 was originally submitted by Nikhil Vaz. The Applicant was substituted as Applicant under section 32 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
2. A Hearing took place on 28 February 2022 and a Decision was issued on that date in which the Tribunal determined to grant an order for payment of £1,350. The Respondent sought recall of the Decision which was granted. A fresh Hearing was fixed for 22 June 2022.
3. The Tribunal considered that the issues which required to be resolved were :
 - whether the Property was the only or main residence of the Respondent and therefore whether the 2011 Regulations were engaged

- 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.

Productions

4. The documents produced to the Tribunal by the Applicant were:

- email from Safe Deposits Scotland to Rachel Lewis dated 24 August 2021 saying that they were unable to locate a deposit on their system for the Property; email dated 24 August 2021 from My Deposits to Rachel Lewis saying that they did not hold a protection for the Property; and email from Letting Protection to Rachel Lewis dated 25 August 2021 saying that they were not currently protecting and had never protected a deposit for Rachel Lewis at the Property
- a screenshot showing a payment of £450 to the Respondent on 12 February 2021 with the reference "flat deposit"
- a screenshot of text messages in which the Respondent asked the Applicant to vacate the Property by 3 July 2021
- a copy advert for a "flat share"
- copy lodger agreement between the Respondent and Karolina Kraska
- screenshots of text messages

5. The documents produced to the Tribunal by the Respondent were:

- a screenshot of text messages between the Respondent and Rachel Lewis (date now shown) in which the Respondent asked Rachel Lewis to pay a deposit of £450 "required to secure room" and refers to rent of £425 per month
- screenshots showing payments being made to Rachel Lewis of £370 on 1 November 2021 and £80 on 17 November 2021
- a copy email from a Housing Officer at NG Homes stating that the Respondent had been a tenant of the Property from 16/10/2018 to 06/07/2021
- a written submission in two emails dated 30 December 2021

Hearing

6. A Hearing took place on 22 June 2022 at 10am by conference call. The Applicant was in attendance along with Nikhil Vaz. The Respondent was also in attendance.
7. The Respondent told the Tribunal that he rented the Property from NG Homes. He commenced renting the Property in 2018. He said he was the only occupier. He said that he asked NG Homes for permission to allow the Applicant to occupy the Property along with him, not as a joint tenant but to “join” his tenancy agreement. He said that NG Homes agreed to that but asked for the Applicant’s name, address and national insurance number. He said that the Applicant was reluctant to provide her national insurance number. He said that the request was made to NG Homes by email and that they telephoned him to say “that was fine”.
8. The Respondent told the Tribunal that the Applicant moved into the Property in early March 2021. He confirmed that the Applicant paid to him a deposit of £450. He said that he did not place the deposit in an approved scheme as he thought he did not require to do that as he was not a registered landlord.
9. The Respondent described the Property to the Tribunal. He said that there was a lounge / dining room, a kitchen, a bathroom and three bedrooms. The Respondent confirmed that Karolina Kraska moved into the Property in January 2021. When asked if NG Homes consented to Ms Kraska occupying the Property the Respondent told the Tribunal they said “it was fine”.
10. The Respondent told the Tribunal that he lived in the Property with Ms Kraska and the Applicant. He said that he did not live there all the time but perhaps once per week, sometimes less. When not living at the Property he said he lived with his Gran. He said that he retained keys for the Property. The Tribunal referred the Respondent to the advert for the Property produced by the Applicant and noted that it referred to the Property having “3 bedrooms (my room)(your room) (walk in wardrobe)”. The Tribunal asked the Respondent if he slept in the room described as a walk in wardrobe. He said that he did. The Tribunal noted that no photographs had been produced showing a bed in the walk in wardrobe.
11. The Tribunal asked the Respondent if NG Homes asked for the Property back. He said that he explained the situation to them and they said it was best to end the tenancy. The Tribunal asked the Applicant if NG Homes had contacted her. She said that when she contacted NG Homes they were not aware that she and Ms Kraska occupied the Property.

12. The Tribunal asked the Respondent the amount of rent paid to him by the Applicant and Ms Kraska. He said that they each paid rent of £350 per month. The Tribunal asked the Respondent if he now lived with his Gran. He said that he did not. He said that he lived "somewhere else".
13. The Applicant told the Tribunal that she responded to the advert for the Property in November December 2020. She said that she viewed the Property in February 2021. She said that Karolina Kraska was in occupation of the Property. She said that Ms Kraska occupied a bedroom and walk in closet. She said that she was given the room that had previously been occupied by the Respondent. She said that the Property was occupied only by her and Ms Kraska until 10 April 2021 when Mr Vaz moved in.
14. The Applicant told the Tribunal that the Respondent did not live in the Property during the period of her occupation. She said that she occupied the bedroom on the left and Ms Kraska occupied the bedroom on the right. She said that she used the living / dining room to study. She said that the third room described as a bedroom contained a set of drawers, an ironing board, a vacuum cleaner and a set of ladders. She said that it did not contain a bed. She said that the room was not big enough to be used as a bedroom aside perhaps for a child. She said that there was no bed or mattress in the walk in closet
15. Mr Vaz told the Tribunal that he moved into the Property on 10 April 2021 and shared a bedroom with the Applicant. He said that the Respondent attended the Property a few times, once to deal with an issue regarding the boiler and once to remove a sofa. He said that he did not think that the Respondent slept any nights in the Property. He said that there was no bed in the walk in wardrobe.
16. In response to a question from the Tribunal the Respondent confirmed that he entered into an arrangement with the Applicant in terms of which she was able to occupy the Property, that she had paid to him a deposit of £450 and that he had not placed the deposit in an approved scheme.

Findings in Fact

The Tribunal made the following findings in fact :

1. The Applicant and the Respondent had entered into a form of tenancy in terms of which the Applicant was entitled to occupy the Property in return for payment of a deposit and monthly rent.
2. The tenancy commenced on or about 25 February 2021.

3. The Respondent sought to terminate the arrangement with effect from on or about 4 July 2021.
4. The Respondent did not occupy the Property as his only or main residence in the period 25 February to 4 July 2021.
5. The Application was made less than 3 months after the tenancy ended.
6. The Applicant paid to the Respondent a deposit of £450 on 12 February 2021.
7. The deposit was not paid to the administrator of an approved scheme in compliance with Regulation 3 of the 2011 Regulations.

Relevant Legislation

Regulation 2 of the 2011 Regulations defines "landlord" as having the meaning conferred by the Housing (Scotland) Act 2006 which is "*any person who lets a house under a tenancy including their successors in title*"

Regulation 3 of the 2011 Regulations provides *inter alia* :

"(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.....

(3) A "relevant tenancy" for the purposes of paragraphs (1) means any tenancy or occupancy arrangement –

(a) In respect of which the Landlord is a relevant person; and

(b) By virtue of which a house is occupied by an unconnected person,

unless the use of the house is of a type described in Section 83(6)

(application for registration) of the 2004 Act.

(4) *In this Regulation the expressions "relevant person" and "unconnected person" have the meanings conferred by Section 83(8) of the 2004 Act."*

Section 83(6) (e) of the Antisocial Behaviour etc (Scotland) Act 2004 states :

"(e) the house is the only or main residence of the relevant person"

Section 83(8) of the Antisocial Behaviour etc (Scotland) Act 2004 states :

"(8) in this Part _

"relevant person" means a person who is not:

- (a) A local authority;*
- (b) A registered social Landlord or*
- (c) Scottish Homes.*

"unconnected person", in relation to a relevant person, means a person who is not a member of the family or the relevant person.

Regulation 9 of the 2011 Regulations provides:

"(i) A Tenant who has paid a tenancy deposit may apply to the First Tier Tribunal for an order under Regulation 10 where the Landlord did not comply with any duty in Regulation 3 in respect of that tenancy deposit.

(ii) An Application under paragraph 1 must be made no later than three months after the tenancy has ended."

Regulation 10 of the 2011 Regulations provides *inter alia* :

"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"

Reasons for the Decision

17. The Respondent's position was that he was not a registered landlord and therefore did not require to comply with the 2011 Regulations. In order to be excluded from the 2011 Regulations the Respondent would require to satisfy the Tribunal that the Property was his only or main residence. This was the

issue in dispute between the Parties. The Tribunal was not satisfied that the Property was the Respondent's only or main residence. The evidence given by the Applicant and Mr Vaz was that the Respondent did not live in the Property at all during the period of the Applicant's tenancy. This was supported by the evidence of Ms Kraska given on 28 February 2022. The Respondent's evidence was that he did live in the Property during the relevant period although only for perhaps one day per week or less frequently. The Respondent did not produce any documents or lead evidence from any witnesses in support of his position. The Tribunal preferred the evidence of the Applicant and Mr Vaz. Even if that had not been the case and the Tribunal had preferred the evidence of the Respondent, the Tribunal took the view that living in the Property for one day per week or less would not make the property the main residence of the Respondent. In those circumstances, even taking the evidence of the Respondent at its highest, the Tribunal determined that the Property was not the only or main residence of the Respondent.

18. The Tribunal was satisfied that the Respondent was a "landlord" for the purposes of the 2011 Regulations and that the arrangements between the Applicant and the Respondent were a "relevant tenancy" for purposes of the 2011 Regulations. The Regulations were therefore engaged.
19. 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 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.
20. The Tribunal considered all of the circumstances presented to it. 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 3 times the deposit being £1,350 in the particular facts and circumstances of this case.

Decision

The Tribunal granted an Order for payment of £1,350 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.

Joan Devine
Legal Member

Date : 22 June 2022

