



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

Chamber Ref: FTS/HPC/PR/21/3226

Re: Property at 24 Anderson Avenue, Aberdeen, AB24 4LS (“the Property”)

Parties:

Miss Rabi Adamu, 61 Balgownie Court, Aberdeen, AB24 1XF (“the Applicant”)

Miss Margaret Simpson, c/o Northwood Aberdeen, 207-211 Rosemount Place, Aberdeen, AB25 2XS (“the Respondent”)

Tribunal Member:

Martin McAllister (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that that the Respondent should pay the sum of FIVE HUNDRED POUNDS (£500) to the Applicant

Introduction

- 1. This is an application submitted by the Applicant with regard to the Respondent’s alleged failure to comply with the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). It is dated 29th December 2021.**
- 2. The tenancy of the Property commenced on 1st December 2020 and terminated on 30th October 2021.**
- 3. It is a matter of agreement between the parties that a deposit of £550 was paid on or around 1st December 2020 and was deposited with Safe Deposits Scotland on 9th March 2021.**

4. After the tenancy had terminated, the Applicant received return of £277.50 from Safe Deposits Scotland after deductions for cleaning and breakages.
5. Prior to the application being accepted for determination, the Applicant requested the letting agent, Northwood Aberdeen, to provide the residential address of the Respondent and this was not provided.
6. On 14th February 2022, the Tribunal made a Direction under Regulation 16 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 requiring that the residential address of the Respondent be provided to it. This Direction was not complied with.
7. On 28th February 2022, the Respondent sent an email to the Tribunal indicating that she relied on her letting agents, Northwood Aberdeen to deal with all matters in connection with the tenancy and that she was content to allow them to represent her at the case management discussion.
8. On 28th February Northwood Aberdeen submitted written representations.

Case Management Discussion of 17th March 2022

9. A case management discussion was held by teleconference on 17th March 2022. The Applicant was present. The Respondent was not present and was represented by Ms Juliet McPherson of Northwood Aberdeen.
10. Ms McPherson said that she did not know why the Direction had not been responded to. She said that the Respondent lives in New Zealand but that she did not have her residential address and that she communicated with her only by email.
11. The Applicant said that she was not aware that the deposit had been unprotected until she got an email from Safe Deposits Scotland indicating that it had been lodged with them on 9th March.
12. Ms McPherson referred to the written representations which had been lodged by Northwood and referred to various points contained therein. She said that Northwood managed around eight hundred properties and had been in business for thirteen years. She said that it had a process in place for ensuring that tenancy deposits are placed with an approved tenancy deposit company. The representations state that, in relation to the deposit relating to the Property, this was a one off error caused by a change in computer software which coincided with the appointment of a new Finance Manager.
13. Ms McPherson said that Northwood had discovered the error when it had carried out an audit. She said that from the point of receipt of the deposit

from the Applicant to the lodging with Safe Deposits Scotland, it had been kept safely in Northwood's client account and that, at no time, were the funds at risk.

14. Ms McPherson said that robust procedures had been put in place to ensure that such an event did not occur again and she referred to training which had been given to existing staff and induction training to new staff.
15. Ms McPherson stated that Northwood Aberdeen would relieve the Respondent of the obligation of paying any financial award which the Tribunal might make.
16. The Tribunal indicated that it was minded to make a payment order requiring the Respondent to pay the sum of £500 to the Applicant. It considered that there was an issue which required to be addressed and that is the fact that the Respondent is in New Zealand and her residential address is unknown. There could therefore be difficulties in the Applicant enforcing the payment order. Any order would be made against the Respondent and not the letting agent.
17. Ms McPherson was candid in stating that Northwood Aberdeen would be paying any sum awarded by the Tribunal. Northwood Aberdeen is acting as an agent for a principal who is not within the jurisdiction of Scotland. It does not have the principal's address. The agent contracted on behalf of the principal because it signed the lease. It is possible, in law, that Northwood Aberdeen would be deemed to be responsible for the debt of its principal in connection with the Property. The Tribunal did not consider that this was a matter which it required to determine but considered that it is for the Respondent or Northwood Aberdeen to make proposals with regard to how any payment order would be paid to the Applicant.
18. The matter was continued to a case management discussion to be held on 29th April 2022.

Case Management Discussion of 29th April 2022

19. The case management discussion was held by teleconference on 29th April 2022. The Applicant was present and Ms Juliet McPherson of Northwood Aberdeen represented the Respondent.

Consideration of Application

20. There were no matters of dispute between parties with regard to the factual position and the Tribunal considered that there was no requirement for a Hearing to be fixed.

The Law

The Tenancy Deposit Schemes (Scotland) Regulations 2011

3. (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.

(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.

(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) 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.

9. (1) A tenant who has paid a tenancy deposit may apply to the sheriff for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.

(2) An application under paragraph (1) must be made by summary application and must be made no later than 3 months after the tenancy has ended.

10. If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—

(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 sheriff 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.

- 21. The application had been lodged within three months of the end of the tenancy and was therefore timeous.**
- 22. In considering matters, the Tribunal had regard to the information provided to it by written representations and at the case management discussion.**

The Sanction

- 23. The creation of regulations to cover tenancy deposits was to protect tenants' funds and provide a structured process of dispute resolution. The Respondent received £550 as a deposit but did not lodge it with an approved deposit scheme.**
- 24. The tenancy was for a period of eleven months and, for just under two months, the deposit was unprotected and should have been lodged with a tenancy deposit scheme.**
- 25. The Regulations are clear in stating that, where there is a breach such as this, the Tribunal must make an order requiring a Landlord to pay a Tenant a sum not exceeding three times the amount of the tenancy deposit. The amount is a matter of judicial discretion and must reflect what is a fair, proportionate and just sanction, having regard to the purpose of the Regulations and the gravity of the breach. It is a balancing exercise.**
- 26. In this particular case, the Tribunal weighed all the circumstances and had regard to the fact that the deposit was unprotected for part of the tenancy but, set against that is the fact that the tenancy deposit was protected before the end of the tenancy and the Applicant had the benefit of the adjudication process of the tenancy deposit scheme.**
- 27. The Tribunal also noted that the letting agent had accepted that it had made an error and that it had, as soon as it discovered that the deposit had not been appropriately lodged, taken steps to deal with it.**
- 28. The Tribunal accepted that the letting agent had taken steps to establish a process to avoid future incidents such as the one which occurred with the Property.**
- 29. The Tribunal had regard to and adopted the approach of the Court in Russell- Smith and Others v Uchegbu (2016) SC EDIN 64 where the Sheriff had effectively stated there to be two broad aspects to the sanction. The first was the period of time the deposit was unprotected and the second**

is a sum to reflect a weighting taking into account the particular circumstances of the case including the landlord's experience etc.

30. The deposit should have been protected by 13th January 2021 taking into account working days. It was unprotected for a period of fifty four days. The term of the tenancy was three hundred and thirty four days. It is considered that the appropriate starting point for the sanction should therefore be £200 and, in coming to this figure, the Tribunal had regard to the relatively short period that the tenancy deposit had been unprotected.
31. The Respondent had been aware of its responsibility to lodge the tenancy deposit with an approved scheme. It had a system in place and it failed. To its credit, the letting agent discovered the error itself, took action to deal with the deposit appropriately and set up procedures to ensure a better system is in place for the future. Set against that is the fact that the letting agent is a company in the business of dealing with rental properties and both landlords and tenants have an expectation that it should exercise its duties in a correct and professional manner. The Tribunal considered that the financial penalty to reflect the second aspect referred to in the Russell- Smith case is fairly set at £300.
32. The note issued after the case management discussion of 17th March 2022 had canvassed the possibility of the Tribunal making a payment order of £500. The Applicant said that she had read the note and understood that any award was of a discretionary nature and it was for the Tribunal to decide what is appropriate. Ms McPherson said that she was content to rely on whatever order the Tribunal considered appropriate.
33. The Tribunal determined to make a payment order requiring the Respondent to pay the sum of £500 to the Applicant. At the case management discussion on 17th March 2022, the Tribunal had raised concerns about making an order against a landlord residing in New Zealand whose address is unknown.
34. Ms McPherson said that Northwood Aberdeen would be paying any sum awarded by the Tribunal. She said that any payment order would be dealt with by her company within thirty days of service of the order. In making such an undertaking, Ms McPherson acknowledged her company's responsibilities as a registered letting agent and possible consequences for it if it did not comply with the undertaking she had given on its behalf.

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.

**Martin J. McAllister
Legal Member
29th April 2022**