

Housing and Property Chamber
First-tier Tribunal for Scotland



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/PR/18/3436

**Re: Property at 45 Gilmerton Dykes Avenue, Edinburgh, EH17 8ND (“the
Property”)**

Parties:

Ms Alana Wild, 3 Fernieflat Neuk, Edinburgh, EH11 4NJ (“the Applicant”)

**Mr Norrie Lewis and Mrs Annette Lewis, 124 South Gyle Gardens, Edinburgh,
EH12 7RZ (“the Respondents”)**

Tribunal Members:

Shirley Evans (Legal Member)

Decision (in absence of the Applicant)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondents failed to comply with their duties as Landlords in terms of Regulations 3 and 42 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”) as amended by the Housing (Scotland) Act 2014 (Consequential Provisions) Order 2017 by failing to pay the Applicant’s tenancy deposit to a scheme administrator of an Approved Deposit Scheme and by failing to provide the Applicant with information, grants an Order against the Respondents for payment of ONE THOUSAND THREE HUNDRED (£1300) STERLING.

Background

1. By application dated 12 December 2019 the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property) Chamber for an order for payment where a landlord has not paid a deposit into an approved scheme in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The Applicant sought three times the deposit of £650. The Applicant lodged a copy of the front cover page of a Minute of Lease with

the Respondents dated 25 March 2016 ("the tenancy agreement"), a signed back page of what is said to be the tenancy agreement the dated 1 April 2016 with handwriting at the bottom of the page relating to the deposit, together with an AT5 Form dated 25 March 2016, 5 pages of screen shots of SMS text messages between the Applicant and the second named Respondent dated 17 October - 3 November 2018 and 5 pages of email correspondence between the Applicant and the Second Named Respondent dated from 31 August 2018 until 29 October 2018.

2. On 10 January 2019 the Tribunal wrote to the Applicant asking her to provide evidence that the deposit had not been paid into any of the three tenancy deposit schemes. The Applicant thereafter provided evidence from the three approved schemes that they did not hold the deposit. This evidence was submitted to the Tribunal by the Applicant on 18 and 23 January 2019.
3. On 1 February 2019, the Tribunal issued a Notice of Acceptance of the Application under Rule 9 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations").
4. The Tribunal advised all parties on 28 February 2019 that a Case Management Discussion under Rule 17 of the Regulations would proceed on 22 March 2019. On 28 February 2019 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 18 March 2019. This paperwork was served on the Respondents by Mark Fishman, Sheriff Officer, Glasgow on 4 March 2019. A certificate of execution of service was received by the Tribunal administration
5. On the 3 March 2019 the Tribunal on its own initiative and for the purpose of making inquiries, issued a Notice of Direction to parties enquiring the Respondents to provide certain evidence including the full tenancy agreement and certain other information with regard to the tenancy deposit by 18 March 2019. The said Direction was sent to all parties by way of Recorded Delivery post on 6 March 2019.
6. The Respondent did not make any written representations or comply with the Direction by 18 March 2019.
7. The Tribunal proceeded with the Case Management Discussion ("CMD") on 22 March 2019. Neither the Applicant nor the Respondents attended. The Tribunal Clerk on making enquiries with the Applicant ascertained that she did not know the CMD was taking place on 22 March 2018. She could not attend as she had young disabled children at home to look after. The Tribunal at its own discretion adjourned the CMD to 13 May 2019.

8. The Tribunal advised all parties on 13 April 2019 that a CMD under Rule 17 of the Regulations would proceed on 13 May 2019. On 13 April 2019 the Tribunal enclosed a copy of the application and invited the Respondents to the CMD on 13 May 2019. This paperwork was served on the Respondents by Stuart Smith, Sheriff Officer, Falkirk, on 18 April 2019. A certificate of execution of service was received by the Tribunal administration.
9. By way of an email received from the Applicant on 10 May 2019 by the Tribunal, the Applicant advised that she was in hospital and that she would not be able to attend the CMD assigned for 13 May 2019. She advised she would *"leave the decision for the court (sic) as I may not be able to take care of myself and disabled children and this case too"*.
10. On 13 May 2019 the Applicant was not present at the CMD. The second named Respondent was personally present and accompanied by her friend Ms McLafferty.
11. In terms of Rule 29 of the Regulations if a party does not appear at a hearing the Tribunal being satisfied that the requirements of Rule 24 (1) regarding notice of the hearing have been complied with may proceed with the Application upon the representations of the party present and all material before it. In the circumstances on the basis of the Application and the information before the Tribunal and having regard to Rule 2 of the Regulations and the overriding objective, there being no prejudice to the Applicant and bearing in mind the contents of the Applicant's email of 10 May 2019, the Tribunal decided to proceed with the CMD in absence of the Applicant.
12. The Respondent confirmed that she understood the position and that the CMD would proceed without the Applicant. She confirmed that the Applicant had a Short Assured Tenancy with a date of 25 March 2016 as per the front cover of the Minute of Lease and AT5 which was before the Tribunal. She also confirmed that she and the Applicant had signed the agreement on 1 April 2016. She explained the Applicant had paid £650 by way of a deposit as evidenced by her signature on the last page of the tenancy agreement which the Tribunal had before it. She had not realised that she was obliged to place the deposit into an approved scheme. The deposit had gone into the tenancy account with the intention that it would be repaid to the Applicant at the end of the tenancy. She explained the tenancy was terminated on 3 November 2018 when she the Applicant had moved out. The deposit was still in that account. She had had personal issues towards the end of 2018 which had distracted her from returning the deposit to the Applicant. She explained she had not known what to do with the deposit after the application had been served on her. Her intention was to refund the Applicant in full of the deposit of £650.

Findings In Fact

13. The Applicant and the Respondents entered into a Short Assured Tenancy signed and dated 1 April 2016 in relation to the Property.
14. The Applicant paid a deposit of £650 on 25 March 2016 as signed for by the Second Named Respondent on the signed back page of the tenancy agreement.
15. The Respondents did not pay the deposit into an approved tenancy deposit scheme. The Second Named Respondent paid the deposit into the tenancy account. The deposit remains in that account.
16. At no time during the tenancy agreement had the Respondents provided the Applicant with any information about any information about the scheme administrator or where the deposit was held.
17. By mutual agreement the tenancy agreement came to an end on 3 November 2018 when the Applicant moved out of the Property.
18. The deposit has not been repaid to the Applicant.

Reasons for Decision

19. For the purpose of Regulation 9(2) of the 2011 Regulations the Tribunal found that the application was made in time within 3 months of the tenancy termination. The 2011 Regulations were intended, amongst other things to put a landlord and a tenant on equal footing with regard to any tenancy deposit and to provide a mechanism for resolving any dispute between them with regard to the return of the deposit to the landlord or tenant or divided between both, at the termination of a tenancy.
20. The amount to be paid to the Applicant is not said to refer to any loss suffered by the Applicant. Accordingly, any amount awarded by the Tribunal in such an application cannot be said to be compensatory. The Tribunal in assessing the sanction level has to impose a fair, proportionate and just sanction in the circumstances, always having regard to the purpose of the 2011 Regulations and the gravity of the breach. The Regulations do not distinguish between a professional and non-professional Landlord such as the Respondent. The obligation is absolute on the Landlord to pay the deposit into an Approved Scheme.

21. In assessing the amount awarded, the Tribunal has discretion to make an award of up to three times the amount of the deposit, in terms of Regulation 10 of the 2011 Regulations.
22. The Tribunal considered that the Respondents' failure was not wilful. However, the Tribunal considered that the breach continued throughout the whole period of the tenancy. The Tribunal considered that the deposit had not been afforded the protection of an approved deposit scheme for the whole of the tenancy. The Tribunal however noted that the Second Named Respondent had correctly admitted the breach of the Regulations. The Tribunal noted that the Respondent's explanation for this was that both her and her husband the First Named Respondent were not aware of their legal obligations to do so.
23. The Tribunal was concerned the Respondents had failed to comply with their duties under Regulations 3 (1) (b) and 42 of the 2011 Regulations to provide the Applicant with information as to where the deposit was protected.
24. In assessing the sum awarded the Tribunal has discretion to make an award of up to three times the amount of the deposit in terms of Regulation 10 of the 2011 Regulations. The Tribunal is obliged to impose a sanction that is fair, proportionate and just in the circumstances.

Decision

25. The Tribunal considered that a fair, proportionate and just amount to be paid to the Applicant was £1300 being two times the amount of the deposit and accordingly made an Order for Payment against the Respondent in favour of the Applicant in that amount.

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.

Shirley Evans

Legal Member/Chair

13 May 2019.

Date