



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 (“the 2011 Regulations”)

Chamber Ref: FTS/HPC/PR/21/0716

Re: Property at 139/7 Buccleuch Street, Edinburgh, EH8 9NE, (“the Property”)

Parties:

Miss Kora Holschbach, Heinrich-Rorbeck-Weg 43, 73614 Schorndorf, Germany and Miss Sarah Stewart, 48 Carntall Road, Newtonabbey, BT36 5SG, Ireland (“the Applicants”); and

Mr Cecil Pang, 92 Bannermill Place, Aberdeen, AB24 5EE (“the Respondent”),

Tribunal Member:

G McWilliams (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 £500.00, in terms of Regulation 10 (a) of the 2011 Regulations, should be made.

Background

1. This Application, lodged with the Tribunal on 22nd March 2021, was brought in terms of Rule 103 of the First-Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the 2017 Rules”) (Application for order of payment where Landlord has not paid the deposit into an approved scheme). The parties’ tenancy agreement began on 8th April 2020 and ended on 10th March 2021. The Applicants paid a deposit amount of £999.00 at the commencement of the tenancy and this was lodged with Safe Deposits Scotland (“SDS”) on 14th October 2020

Case Management Discussions

2. A Case Management Discussion ("CMD") proceeded remotely by telephone conference call on 13th May 2021. Reference is made to the Notes on that CMD, dated 13th May 2021.
3. Immediately following the CMD on 13th May 2021 the Applicant Ms Stewart submitted relevant documentation, being an email sent to the Applicants by the Respondent on 22nd March 2020, attaching SDS's Prescribed Information in respect of the registration of the deposit monies, and copies of email communications between the Applicants and SDS in October 2020, after the Respondent paid the deposit monies to SDS. On 4th June 2021 the Respondent submitted an email, from SDS to him dated 22nd March 2020, which confirmed the Respondent's registration of the Applicants' deposit payment and notified the Respondent of details for his bank transfer of the deposit monies to SDS.
4. A further CMD proceeded remotely by telephone conference call at 11.30am today. The Applicants and the Respondent attended.
5. At the CMD today the Applicants stated that they sought that the Tribunal make a decision for payment by the Respondent to them of an appropriate sanction amount, as their deposit was not lodged with SDS, and protected, for some 6 months after their payment in March 2020, in breach of the 2011 Regulations. They referred to the email sent to them by the Respondent on 22nd March 2020, with SDS's Prescribed Information, being confirmation of registration of the deposit monies which were paid by them that day. They stated that they had been misled by the Respondent as they understood that their deposit monies had been paid to SDS on 22nd March 2020. The Applicants said that they had no further communications regarding their deposit until they were notified of payment by SDS, on 15th October 2020. The Applicants acknowledged that the public health pandemic, and lockdown, began on 23rd March 2020. They stated that the Respondent should have transferred the deposit to SDS online, notwithstanding the pandemic. They said that they felt that they had been taken advantage of by the Respondent as they were students and they considered that he had not taken them seriously regarding the need to pay the deposit to SDS timeously. The Applicants stated that they ended the tenancy early as the public health pandemic had resulted in them no longer having face to face University teaching. They stated that there were no issues when the tenancy ended and their deposit monies of £999.00, under deduction of £11.00, were returned to them by SDS.
6. The Respondent reiterated his apology for his oversight in not paying the deposit monies to SDS until October 2020. The Respondent stated again that, immediately after receipt on 22nd March 2020, he registered the deposit with SDS. He said that the following day, on 23rd March 2020, the public health pandemic and lockdown began, there were various developments with his let properties, tenants left his other properties and he forgot to pay SDS. He said

that he realised that he had forgotten to pay the deposit monies to SDS when he was checking his business accounts in October 2020. He stated that he paid the deposit to SDS as soon as he realised his oversight in not having done this earlier. The Respondent also reiterated that he had never previously failed to pay deposit monies to SDS timeously. He said that he also sought that the Tribunal make a decision. The Respondent stated that he wished the matter to be concluded as it was having an adverse impact on his mental health. The Respondent repeated his apology for his oversight and stated that he could only now ask to be forgiven for this.

Reasons for Decision

7. Rule 17 of the 2017 Rules provides that the Tribunal may do anything at a CMD which it may do at a Hearing, including making a decision. The Tribunal was satisfied that it had before it all of the information and documentation it required to make a decision and, accordingly, that it would determine the Application.
8. The Application was brought timeously in terms of regulation 9(2) of the 2011 Regulations.
9. 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.”
10. The Respondent, as Landlord, was required to pay the Applicants’ deposit monies into an approved scheme, either personally or through an agent, within 30 working days of 8th April 2020. This was not done.
11. 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.”
12. The Tribunal, being satisfied that the Respondent did not comply with his duty under Regulation 3, accordingly have to order the Respondent to pay the

Applicants a sanction amount not exceeding three times the amount of the tenancy deposit.

13. In the case of *Jenson v Fappiano* 2015 G.W.D 4-89, Sheriff Welsh, in relation to Regulation 10(a) of the 2011 Regulations, was of the opinion that there had to be a judicial analysis of the nature of the non-compliance in the circumstances of the case and a value attached to reflect a sanction which was fair, proportionate and just given those circumstances. Sheriff Welsh was of the opinion that, when determining the sanction value, the starting point was not the maximum award to be discounted by mitigating factors. He considered that this would be inconsistent with the exercise of balanced, judicial discretion.
14. In the case of *Tenzin v Russell* 2015 Hous. L. R. 11, the Court of Session reiterated that the amount of any payment in terms of Regulation 10(a) of the 2011 Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case.
15. The facts regarding the deposit payment by the Applicants, the immediate registration of the deposit with SDS by the Respondent and his late payment of the deposit monies to SDS, were agreed by the parties.
16. In determining a fair, proportionate and just sanction in the circumstances of this Application, the Tribunal considered the circumstances of this Application and weighed all of the evidence and factors. The deposit monies were registered with SDS immediately after being paid by the Applicants on 22nd March 2020. SDS's email to the Respondent, dated 22nd March 2020, confirmed this. The Respondent candidly stated from the outset that as the public health pandemic, and lockdown, began on the day after payment, and registration, of the deposit, he had to attend to other business matters and forgot to pay the deposit monies to SDS. He had apologised for his omission from the outset. As soon as he realised his error, in not paying the deposit to SDS timeously, he immediately rectified the matter and protected the Applicant's deposit monies, on 14th October 2020. The Applicants had their deposit, of £999.00, returned, under deduction of the sum of £11.00, when they ended the tenancy agreement early on 10th March 2021. It was due to run until 6th June 2021.
17. Having considered the circumstances, and weighed all of the evidence and factors, the Tribunal determined that the sum of £500.00 is an appropriate sanction to impose. In reaching its decision on the appropriate and just level of sanction to be awarded, the Tribunal exercised their judicial discretion and placed particular reliance on the nature of the Respondent's non-compliance with the 2011 Regulations. The Respondent registered the deposit monies with SDS immediately that they were paid, on 22nd March 2020. The unprecedented public health pandemic, and national lockdown, began on 23rd March 2020. Given the national circumstances all persons were concerned about and focused on health, family, economic and business circumstances

for a number of months thereafter, and are, presently, still so concerned. The Tribunal found that it was reasonable that, in those circumstances, and after registering the deposit with SDS immediately, the Respondent had to deal with other pressing matters and forgot to pay the deposit monies to SDS for some 6 months. The Tribunal found that the Respondent's immediate registration of the deposit with SDS, his failure to pay the monies to SDS as he dealt with other matters arising from the pandemic and his own realisation of his oversight and subsequent payment to SDS were all factors which significantly mitigated his breach of the 2011 Regulations. The Tribunal, however, must impose a sanction, in terms of the 2011 Regulations and found that the sum of £500.00 fairly, proportionately and justly reflects an appropriate sanction for the Respondent's non-compliance with the Regulations, given all the facts and circumstances of this Application.

18. Accordingly the Tribunal determined that an order for payment by the Respondent to the Applicant of the sum of £500.00, in terms of Regulation 10(a) of the 2011 Regulations, should be made.

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.

G McWilliams

17th June 2021

Legal Member