



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”)

Chamber Ref: FTS/HPC/PR/20/2596

Property at 20 Well Street, Monifieth, DD5 4AH (“the Property”)

Parties:

Miss Sophie Stuart, 20a Brook Street, Monifieth, DD5 4BE (“the Applicant”)

Mr Bernard Ferrie, 35 Toll Crescent, Forfar, Angus, DD8 2RF (“the Respondent”)

Tribunal Members:

Josephine Bonnar (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 £75 should be made in favour of the Applicant.

Background

1. By application received on 14 December 2020, the Applicant seeks an order in terms of Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and Regulations 9 and 10 of the 2011 Regulations. The Applicant lodged a certificate from Safe Deposit Scotland (“SDS”), which states that a deposit of £350 was lodged on 4 May 2020, in support of the application. She also submitted a Notice of Prescribed Information about the tenancy deposit which states that the deposit was received by the Landlord on 4 March 2020 and lodged with SDS on 4 May 2020.
2. A copy of the application and supporting documents were served on the Respondent. Both parties were advised that a case management discussion (“CMD”) would take place by telephone conference call on 3 March 2021 at 11.30am and that they were required to participate. Prior to the CMD the Applicant sent emails to the Tribunal, on 3 and 10 February 2021, stating that she was unable to participate due to work commitments but that she did not

require a postponement and was happy for the CMD to proceed in her absence. On 18 February 2021, the Respondent's solicitor lodged detailed written representations. A copy of the submission was issued to the Applicant, but no response was received.

3. The application called for a CMD on 3 March 2021 at 11.30 am. The Applicant did not participate and was not represented. The Respondent was represented by Mr Masterton, solicitor.

The submissions

4. In their written submissions, the Respondent's solicitor states that the Respondent is 92, the property is the only property he lets out, that he previously resided there before moving to sheltered housing and that he lets it out because he was unsuccessful in selling it. The tenancy deposit was paid by card on 10 March 2020, to the Respondent's solicitor. The funds did not show as cleared funds in the client account until 4 or 5 days later. This was shortly before the start of the pandemic lockdown and the firm was busy dealing with urgent wills and powers of attorney for clients who were concerned about the pandemic. When the lockdown was announced on 23 March 2020, staff were furloughed, and the solicitor had to start working from home. It was 4 weeks before this was fully set up. When banking and case management systems were set up, the cashier noticed that the deposit had not been lodged in a scheme and took steps to lodge it immediately with SDS. The solicitor also stated that the funds were not at any risk as they were held by the firm at all times, not by the Respondent, and that this was not a case of an "unscrupulous and delinquent landlord". The submissions conclude with a statement that the solicitor's firm has introduced a new system for tenancy deposits to ensure that this oversight does not happen again, and which ensures that deposits are transferred to the scheme as soon as they are received.

The CMD

5. From the application form, the documents lodged in support of the application and the information provided at the CMD the Tribunal noted the following: -
 - (i) The tenancy started on 4 March 2020 and terminated on 8 December 2020.
 - (ii) The Applicant paid a deposit of £350 on 3 March 2020.
 - (iii) The deposit of £350 was not lodged in an approved tenancy deposit scheme until 4 May 2020.
6. Mr Masterton advised the Legal Member that although the Applicant had paid the deposit by credit card on 3 March 2020, this did not show up as cleared

finds in the client account until a few days later. During the weeks running up to the Government lockdown his firm had been particularly busy with visits to care homes and hospitals for wills and powers of attorney to be arranged. He referred to his written representations. He confirmed that the Landlord had been unaware of the delay in lodging the deposit as he had delegated all tenancy related matters to the solicitors. The late lodging by the solicitor's firm was due to oversight caused by the pressure of business prior to 23 March 2020 and the difficulties caused by the lockdown – staff on furlough and the solicitor working from home. The oversight was addressed as soon as it was discovered and the deposit itself was never at risk as it was in the client account throughout. Mr Masterton also advised the Legal member that the Respondent authorised the return of the full deposit to the Applicant at the end of the tenancy which she would have received within a few days of the tenancy ending. He said that a new system was now in place to ensure that all tenancy deposits were lodged as soon as they were paid. He stated that the award to the Applicant should be zero, given the circumstances and the lack of prejudice to the Applicant.

Findings in Fact

7. The Applicant is the former tenant of the property.
8. The tenancy started on 4 March 2020.
9. The Respondent is the owner and former landlord of the property.
10. The Applicant paid a deposit of £350 on 3 March 2020.
11. The tenancy terminated on 8 December 2020.
12. The deposit paid by the Applicant was not lodged by the Respondent in an approved tenancy deposit scheme until 4 May 2020.
13. The deposit paid by the Applicant was repaid to her in full at the end of the tenancy.

Reasons for Decision

14. Regulation 3 of the 2011 Regulations states –
 - (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.
 - (1A) Paragraph (1) does not apply –

- (a) Where the tenancy comes to an end by virtue of section 48 or 50 of the Private Housing (Tenancies) (Scotland) Act 2016, and
- (b) The full amount of the tenancy deposit received by the landlord is returned to the tenant by the landlord,
Within 30 working days of the beginning of the tenancy.

15. The Tribunal is satisfied that the Applicant's tenancy is a relevant tenancy in terms of the 2011 Regulations and that a deposit of £350 was paid and not lodged in an approved deposit scheme within 30 days of the start of the tenancy. The Tribunal notes that the application was lodged with the Tribunal on 14 December 2020. The Applicant has therefore complied with Regulation (9)(2) of the 2011 Regulations, which requires an application to be submitted no later than 3 months after the tenancy had ended.

16. Regulation 10 of the 2011 Regulations stipulates that if the Tribunal is satisfied that the landlord did not comply with a duty in terms of regulation 3, it “**(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit.**” The Tribunal therefore determines that an order must be made in favour of the Applicant.

17. The Applicant seeks an award of three times the deposit, the maximum which can be awarded. She chose not to participate in the CMD and provided no further information to the Tribunal, other than that contained within the application and supporting documents. She did not respond to the submissions lodged by the Respondent's solicitor or dispute any of the information provided by them. The application did not provide any information which would establish any loss or prejudice to the Applicant because of the late lodging of the deposit.

18. The Legal Member notes that the deposit was lodged in an approved scheme by the Respondent's solicitor 31 days after the expiry of the 30 day period specified in the 2011 Regulations. The tenancy was not terminated until 8 December 2020 and the deposit was secured until that date. The Respondent is elderly and is not an experienced landlord. This is his only property. It was clear from the written and oral submissions that the late lodging of the deposit was an oversight on the part of the Landlord's agent. Although the 2011 Regulations impose obligations on landlords, rather than the agents they instruct, the Legal Member is satisfied that the Respondent had delegated this matter to his solicitor and had no actual knowledge of the oversight. The deposit was never in his possession and although was not secured in a deposit scheme for several weeks, it was held by a solicitor in his client account. The deposit was therefore relatively safe for the unsecured period. The Legal Member is also satisfied that the deposit was paid shortly prior to the lockdown imposed by the Government on 23 March 2020. This had a serious impact on the firm of solicitors instructed by the Respondent, with some staff immediately on furlough and others having to work from home. The Legal Member is also satisfied that the solicitor addressed the oversight as soon as he became aware of it, with the deposit being lodged on 4 May 2020. The Legal Member also notes that the whole deposit was released back to the Applicant at the end of the tenancy and

that there do not appear to have been any adverse financial consequences for her because of the breach of the Regulations. In the circumstances, the Legal Member is satisfied that the failure to comply with the 2011 Regulations was at the lowest end of the scale and that an award of £75 should be made in favour of the Applicant.

Decision

19. The Tribunal determines that an order for payment of the sum of £75 should be made in favour of the Applicant.

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.

Josephine Bonnar

Josephine Bonnar, Legal Member

3 March 2021