



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

Chamber Ref: FTS/HPC/PR/18/0111

Re: Property at 210 Kintore Park, Glenrothes, Fife, KY7 6UR (“the Property”)

Parties:

Mrs Alison Wotherspoon, 59 Alves Drive, Glenrothes, Fife, KY6 2JZ (“the Applicant”)

Mr James Donald, 33 Balfour Gardens, Glenrothes, Fife, KY6 2NJ (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. The Applicant made an application to the Tribunal under regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”) and in accordance with rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended. The Applicant sought an order for payment where landlord has not paid the deposit into an approved scheme in terms of that rule.
2. The order sought from the Tribunal was an order for payment of three times the amount of the tenancy deposit as a result of the Respondent’s failure to pay the tenancy deposit into an approved scheme (as defined in the 2011 Regulations) in terms of regulation 3 of the 2011 Regulations.

3. The application was accompanied by a copy of the tenancy agreement, a copy of the landlord's notice to quit and copies of text correspondence between the parties. The application was dated 15th January 2018.

The Case Management Discussion

4. A Case Management Discussion took place on 13th March 2018 at Fife Voluntary Action, 16 East Fergus Place, Kirkcaldy K1 1XT. The Applicant appeared in person supported by her mother, Anne Nicholson. The Respondent did not appear in person, but was represented by Mrs McKenzie, solicitor.
5. The lease commenced on 1st July 2012, and ended on or about 27th December 2017. This application was accordingly brought timeously within the 3 month period provided in terms of regulation 9(2) of the 2011 Regulations.
6. Mrs McKenzie accepted on behalf of the Respondent that he and the Applicant were landlord and tenant respectively in relation to the property at 210 Kintore Park, Glenrothes. She accepted that her client had been paid a returnable deposit of £550 (equivalent to one month's rent) in terms of clause 10 of the lease, which sum ought to have been paid into an approved scheme in terms of regulation 3 of the 2011 Regulations, which came into force on 7th March 2011.
7. Mrs McKenzie advised that the Respondent is a motor mechanic by trade, does not run any form of substantial commercial letting business, and has no specialised knowledge of housing law or regulations. He was simply unaware (as Mrs McKenzie accepted on his behalf he should have been) of the need for the deposit to be placed with an approved scheme.
8. Mrs McKenzie advised that the Respondent found significant damage to the property and its fittings after the Applicant had quit the property, which he contended was not present at the commencement of the lease. He also contended that the property was left in a dirty condition and needed extensive cleaning. The cost of cleaning and repair would significantly exceed the sum of the deposit.
9. The Applicant refuted the assertion that she had left the property in a dirty condition. She stated that she had thoroughly cleaned the property before she left. She also refuted the assertion that there was any damage to the property other than slight damage to plasterwork on one wall where she had removed wallpaper. She contended that she had offered to fix this when she quit the premises.

Reasons for Decision

10. This application was brought timeously in terms of regulation 9(2) of the 2011 Regulations.

11. 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.”
12. The Respondent as landlord was required to pay the deposit into an approved scheme. He accepts that he failed to do so.
13. 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.”
14. The Tribunal is satisfied that the Respondent did not comply with his duty under regulation 3, and accordingly it must order the Respondent to pay the Applicant an amount not exceeding three times the amount of the tenancy deposit.
15. In *Jenson v Fappiano* 2015 G.W.D 4-89, Sheriff Welsh opined in relation to regulation 10 of the 2011 Regulations that there had to be a judicial assay of the nature of the non-compliance in the circumstances of the case and a value attached thereto which sounded in sanction, and that there should be a fair, proportionate and just sanction in the circumstances of the case. With that assessment the Tribunal respectfully agrees.
16. In *Tenzin v Russell* 2015 Hous. L. R. 11, an Extra Division of the Inner House of the Court of Session confirmed that the amount of any award in respect of regulation 10(a) of the 2011 Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case.
17. In determining what a fair, proportionate and just sanction in the circumstances of this application should be, the Tribunal took account of the facts that the Respondent is a motor mechanic by trade, does not run any form of substantial commercial letting business, has no specialised knowledge of housing law or regulations, is a relatively inexperienced landlord, was unaware (as Mrs McKenzie accepted on his behalf he should have been) of the need for the deposit to be placed with an approved scheme, and accepted at the first opportunity before the Tribunal that he was at fault and had contravened Regulation 3 of the 2011 Regulations.

18. In these circumstances, the Tribunal considers that albeit ignorance of the terms of the 2011 Regulations is no excuse or defence, the foregoing factors do represent mitigation in respect of the sum to be awarded in the exercise of its judicial discretion. The Tribunal considers that the sum of £550 (the amount of the tenancy deposit) is an appropriate sanction to impose in this application.
19. In terms of regulation 10(b)(i) of the 2011 Regulations, the Tribunal may, if it considers it appropriate in the circumstances of the application, order the landlord to pay the tenancy deposit to an approved scheme.
20. It became clear in the course of the Case Management Discussion that there is a sharp factual dispute between the parties as to how much of the returnable deposit (if any) should be repaid to the Applicant by the Respondent. The Respondent alleges that the Applicant caused significant damage to the property, and that the cost of repair will exceed the amount of the deposit. In those circumstances, he contended that he should be entitled to retain the deposit to meet that cost. The Applicant refuted these allegations, and asserted that other than very minor cosmetic plaster damage to one wall which is capable of easy and inexpensive repair, she had left the property clean and in good order and is entitled to return of the deposit.
21. One of the mechanisms provided for in the 2011 Regulations, is a dispute resolution procedure operated by the approved scheme holding the deposit in terms of Part 6 of the 2011 Regulations. The purpose of this part of the 2011 Regulations is to provide a mechanism to resolve disputes about how much of the deposit should be repaid to the tenant, and how much might be repaid to the landlord, in the event of dispute on that matter.
22. In the circumstances of this application, the Tribunal considers it appropriate to order the Respondent to pay the tenancy deposit to an approved scheme. Once that has been done, the parties can then utilise the approved scheme dispute resolution mechanism to determine to whom the sums representing the deposit should be repaid, standing the obvious dispute regarding its potential retention in respect of damage which the Respondent alleges the Applicant caused to the property before she left, which allegation the Applicant strongly rejects.

Decision

23. For the foregoing reasons, the Tribunal orders the Respondent in respect of his breach of Regulation 3 of the 2011 Regulations:
 - (1) to make payment to the Applicant of the sum of £550 in terms of Regulation 10(a) of the 2011 Regulations; and
 - (2) to make payment of the tenancy deposit of £550 to an approved scheme in terms of Regulation 10(b)(i) 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.

N Kinnear

Legal Member/Chair

13/03/18

Date