

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 Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Chamber Ref: FTS/HPC/PR/18/0249

Re: Property at 12 Harelaw Avenue, Muirend, Glasgow, G44 3HZ (“the Property”)

Parties:

Mrs Mary Walker, 1 Kendal Avenue, Giffnock, Glasgow, G46 6HD (“the Applicant”)

Mr Timo Dekoning, 49C Seabird Lane, Beach Village, Discovery Bay, Lantau Island, Hong Kong (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) being satisfied that the Respondent as landlord of the property at 12 Harelaw Avenue, Muirend, Glasgow, G44 3HZ, Glasgow, did not comply with any duty in Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011, makes an order for the Respondent to pay to the Applicant the sum of one thousand one hundred pounds (£1100).

This is an application in terms of Rule 103 of the First-tier Tribunal for Scotland (Procedure) Regulations 2017 ‘the rules’ for an order for payment where a landlord has not paid the deposit into an approved scheme in terms of Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011, “the regulations”. The application was made by Mrs Mary Walker on the 31 January 2018. The hearing today was a case management discussion. The applicant attended and was accompanied by her daughter. Mrs Margaret Ferry attended on behalf of the landlord as his representative.

The Tribunal had before it the following copy documents:-

1. Application dated 17 January 2018 and received by the Tribunal on the 31 January 2018.
2. Tenancy agreement dated 30 June 2016.
3. Exchange of emails between the applicant and respondent dated 25, 26 October 2017.
4. Copy bank statement of applicant from 27 June 2016.
5. Email from respondent dated 16 March 2018 with enclosures including bank statements and print out from deposit scheme.

Case management discussion

The tribunal had a discussion with the applicant and respondent's representative to ascertain the agreed facts. It was a matter of agreement that the parties entered into a tenancy agreement in June 2016 and the applicant paid a deposit to the respondent of £1100 in two instalments of £550. It was a matter of agreement that the applicant left the property on 25 November 2017 and the tenancy came to an end on that date.

It was also agreed that the respondent did not place the deposit of £1100 in a deposit scheme until after he received the applicant's email of 26 October 2017. It was agreed that the money was placed in an appropriate scheme around 30 October 2017.

It was agreed that the applicant had received £800 from the deposit and the remaining £300 was the subject of a separate dispute between the parties.

The tribunal sought to ascertain if the respondent had, after the 30 October 2017, complied with any of the duties contained in Regulation 42(3)(b and Regulation 42(1) ie did he comply within 30 working days of 30 October 2017?. The applicant did not recall receiving any notification in relation to the deposit or the landlord registration details. The email from the respondent of the 16 March 2018 stated that Mrs Walker could check the landlord registration on the local authority website, which suggests that the notification in terms of Regulation 42 (1)(d) was not done.

Mrs Ferry was unsure whether the respondent had notified the applicant. The tribunal adjourned for both Mrs Ferry and the applicant to check the position. When the tribunal reconvened the applicant stated that she had received an email reminder from the respondent of 8 November 2017 which made no mention of the deposit. She does not recollect receiving anything else.

Mrs Ferry stated that the respondent has no access to his emails at present however his position is that the tenancy deposit scheme would notify the applicant of the deposit. Further Mrs Ferry stated that the material provided to the applicant at the time the tenancy agreement was entered had the landlord registration scheme details on it.

Both parties were content for a final decision to be made on the application today.

Mrs Ferry stated that this was an oversight on the part of the respondent. He has one other property which she manages and it was not a wilful breach. The deposit was made before the tenancy came to an end.

The applicant took issue with the detailed documents lodged by the respondent regarding the dispute which has arisen with the property. The tribunal did not seek any submissions from her on this point, other than to note that it serves to illustrate the importance of the deposit being made so that a dispute resolution system is available in connection with the deposit. The applicant also had other points to make regarding other failures by the respondent regarding the property which were not relevant to the application before the Tribunal today

Findings in fact

The tribunal is satisfied that the applicant paid a deposit of £1100 to the respondent in June 2016 as her landlord.

The tribunal is satisfied that the applicant rented the property at 12 Harelaw Avenue Muirend Glasgow between June 2016 and November 2017.

The tribunal is satisfied that the deposit was not paid in to a recognised deposit scheme until 30 October 2017 and the landlord did not provide details of the scheme or a statement that he is or has applied to be entered in the register of landlords maintained by the local authority, as required by Regulation 42 of the regulations.

Reasons

The tribunal was satisfied that a breach of Regulation 3 has occurred and that an order is appropriate in terms of Regulation 10. The tribunal considered the terms of the regulations. Regulation 3 provides:-

A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 days of the beginning of the tenancy, pay the deposit to the scheme administrator of an approved scheme. And provide the tenant with the information required under regulation 42.

The tribunal reviewed all of the recent cases regarding tenancy deposit schemes and noted that in the case of Kirk-v-Singh sheriff Jamieson states

The defender, a registered landlord, acted through his agent. Although that ignorance is no excuse, it is a factor to be taken into account in the exercise of my discretion.

Sheriff Jamieson in Singh was mindful of the need to:-

proceed to impose a sanction which is "fair , proportionate and just having regard to the seriousness of the noncompliance.

The tribunal, having heard all of the available evidence and taking into account the representations made for the respondent is satisfied that the respondent failed to comply with all of his obligations in terms of Regulation 3.

The tribunal noted in mitigation that the respondent had finally lodged the deposit late (although none of the notifications required in Regulation 42 appear to have been carried out). This meant that the true purpose of the Regulations could be fulfilled to some extent and the dispute regarding the balance of the deposit is on going between the parties. The tribunal noted that the breach appears to be an oversight . Taking all of that into account the tribunal decided that an sanction of £1100 is just and reasonable in all of the circumstances.

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.

Lesley Ward
Legal Member/Chair

28 March 2018
Date