

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/18/0141

Re: Property at 173 Piper Drive, Glenrothes, KY7 6TG (“the Property”)

Parties:

Ms Cookie Cook, 6 Barnhill Place, Glenrothes, KY6 2JW (“the Applicant”)

Maureen Gilliard, 72 Uist Road, Glenrothes, Fife, KY7 6RE (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatrige (Legal Member) and Tony Cain (Ordinary Member)

Decision

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

BACKGROUND:

The Applicant made an application under Rule 103 of the Rules of Procedure on 18 January 2018. At that time the Respondent was stated as Mr Jay Turner, Trusted Properties and no details of the landlord and the nature of the claim were provided. In terms of Regulations 9 and 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 an order under Regulation 10 has to be directed at the landlord. The Applicant then advised the landlord was Mrs Maureen Gilliard, and gave the address as c/o the initial respondents.

The Applicant submitted to the Tribunal tenancy agreements dated 24 January 2014, 24 July 2015, 24 July 2016, 24 April 2017 and a text exchange with the landlord's agent between 8 September 2017 and 8 December 2017.

The end date of the tenancy was stated as 24 October 2017 by the Applicant.

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) held a Case Management Discussion in terms of Rule 17 of the Rules of Procedure on 3 April 2018 at Fife Volunteer Action, 16 East Fergus Place, Kirkcaldy. The notification to the Case Management Discussion (CMD) had been served on the

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landlord via the shopfront at 4 Whytehouse Avenue, Kirkcaldy KY1 1UW by Sheriff Officers but only the Applicant attended. Further enquiries disclosed that the landlord had not received intimation of the CMD. The CMD note is referred to for its terms and held to be incorporated herein.

Further information and an up to date address for the landlord were requested and subsequently submitted by the Applicant. The Letting Agent confirmed in an email dated 23 April 2018 to the Tribunal that the landlord no longer was their client and they had not passed any documents to the landlord. The tribunal accepts that the application was amended to show the details of the Respondent as the landlord, namely Mrs Gilliard.

The Tribunal made enquiries with the 3 Deposit Schemes in Scotland and received correspondence from LPS on 18 April 2018 that a deposit of £500 had been lodged for the address on 24 January 2015. The deposit had been returned to the Letting Agent Trusted Properties Fife Ltd on 13 December 2017 as stated in the letter from LPS to the Tribunal on 21 May 2018. They advised and in their letter of 7 May 2018 to the Tribunal that the deposit under Deposit ID 14544123 had been returned to the Letting Agent as they had attempted to contact the Tenant at their last known address but did not receive a response within the 30 working days deadline set out in their Terms and Conditions.

The Tribunal received representations from the Respondent dated 16 May 2018 which are referred to for their terms. She lodged a copy of the tenancy agreement dated 24 April 2017 with AT5, emails from Letting Protection Scotland to info@trusted-lettings.co.uk confirming the payment of the deposit into the scheme in two instalments of £420 on 23 January 2015 and £80 on 24 January 2015 and correspondence by the letting agent to her dated 8 May 2018, a copy of the letter by the tenant returning the keys dated 22 October 2017 and requesting information about the deposit, rental statements and bank statements and photographs regarding alleged damage to the property as well as an invoice from Carpetright.

The Tribunal received further representations from the landlord dated 31 May 2018 enclosing a letter from a neighbour, a letter from Trusted Lettings to the tenant dated 24 January 2017 advising her that a month to month lease had been put in place starting 24 January 2017 and confirming that a deposit received from her of £500 had been lodged with Letting Protection Scotland. This provided space for a signature of the tenant but was not signed by her. The landlord further submitted a copy of the 2016 lease and part of the AT5 form for this.

The Applicant had initially asked for the payment of 4 months rent for the period from January 2017 to April 2017 when she had alleged she had no tenancy agreement. At the CMD in April 2018 the Applicant had advised that this would require a further application and would not be covered by an application under Rule 103. She confirmed at the CMD and at the hearing that this was no longer part of her application. However, it is her position that for the period no lease document was in place.

At the hearing the Applicant provided a copy letter dated 25 January 2014 from Trust in Fife showing her re-payment arrangements with that organisation of £10 per week



starting 21 February 2014 regarding the deposit for 173 Piper Drive Glenrothes paid on her behalf by Fife Keyfund.

The hearing:

Present at the hearing were the Applicant Ms Cook and the Respondent Mrs Gilliard together with her husband as support.

The Applicant's evidence was that she had been living at the property from 2014 to October 2017 under successive tenancy agreements, which the exception of January to April 2017, when she states she had no tenancy agreement. She had paid £500 deposit to the letting agent on 24 January 2014 when her first tenancy started and had not received this back. She disputes damage to the property and considers that she gave notice to the landlord via the letting agent on 8 September 2017 and expected that the tenancy would then end on the end date stated in the latest tenancy agreement on 24 October 2017. The latest tenancy agreement of 24 April 2017 specified that a £500 deposit had been paid by her and that this will be held by SAFETY DEPOSIT SCOTLAND. She had contacted the letting agent at least 3 times requesting information about the deposit, on 22 October 2017 and by two requests via texts on 2 November 2017 stating that she had contacted the scheme named on the lease but they had no records of the deposit. She states she had not received any information about the deposit scheme reference from the agent. She had no correspondence from any deposit scheme regarding the tenancy deposit return and the issue of dispute resolution regarding the deposit. She had not left a forwarding address and had made no arrangements for uplifting or forwarding her mail from the address at Piper Drive after she moved out. She disputes any damage to the property. She confirmed that she was seeking payment of £500 from the Tribunal.

The Respondent's evidence was that she had been a first time landlord and had trusted the letting agent employed by her that they would deal with all necessary matters on her behalf. She had been unaware about the payment of the deposit, where it had been lodged and when it was returned and only knew that she had received £440 in December 2017 from the letting agent, which she assumed was the deposit less the letting agent's fee. She considers that there was damage to the property as per her representations and that she had been entitled to the deposit because of that. She considers that the end of the tenancy was 24 November 2017 rather than 24 October 2017 because the tenancy agreement of 24 April 2017 in clause 31 provides for a notice period of 2 months to be given by the tenant and notice had been given on 8 September 2017. She advised the tribunal that she felt let down by the letting agent who had handled matters on her behalf but not even told her of the application by the Applicant, otherwise she would have attended the CMD. She had no involvement in the lodging of the deposit and its return.

The legal test:

In terms of Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 an application under that Regulation must be made within 3 months of the end of the tenancy. In terms of Regulation 10 "if satisfied that the landlord did not comply with any duty in Regulation 3 the sheriff must order the landlord to pay the tenant an

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amount not exceeding three times the amount of the tenancy deposit; and (b) may, as the sheriff 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.”

In terms of Regulation 3 “(1) A landlord who had received a tenancy deposit in connection with a relevant tenancy must, within 30 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.”

In terms of Regulation 42 (2) the information includes “(b) the date on which the tenancy deposit was paid to the scheme administrator...(e) the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid and (f) the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement. (3) the information in paragraph (2) must be provided (a) where the tenancy deposit is paid in compliance with regulation 3 (1) , within the timescale of set out in that regulation”

Findings in fact:

The Applicant paid a deposit of £500 to the letting agent acting on behalf of the landlord on 24 January 2014. She had remained as a tenant at the property under successive rental agreements from 24 January 2014 to 24 October 2017. For the period of 24 January 2017 to 24 April 2017 no signed lease appears to have been in place.

The deposit in terms of the tenancy agreements entered into in 2014, 2015 and 2016 was to be held by Letting Protection Service. It was paid to Letting Protection Service in two instalments of £420 on 23 January 2015 and £80 on 24 January 2015 and was returned to the letting agents by LPS on 13 December 2017 following attempts of LPS to contact the Applicant at her previous address.

No information was given to the tenant regarding the date of payment into the scheme and the contact details for the scheme either in 2014, 2015 or 2016.

A letter from the letting agent to the tenant dated 24 January 2017 advising her that a month to month lease had been put in place starting 24 January 2017 and confirming that a deposit received from her of £500 had been lodged with Letting Protection Scotland provided no contact details or reference number for the deposit and although this was clearly meant to be receipted by the tenant, no signature of the tenant was on the document lodged. The tribunal considers on balance that this document was not sent to the tenant as the signature is missing and the tenant disputes having received a month to month lease for that period.

The tenancy agreement of 24 April 2017 confirms receipt of a deposit of £500 from the tenant and states that this will be lodged with SAFETY DEPOSIT SCOTLAND. No information was provided to the tenant regarding that deposit and it was not lodged with SAFETY DEPOSIT SCOTLAND.

The tenant had contacted SAFETY DEPOSIT SCOTLAND prior to 2 November 2017 and been advised no deposit was held by them for the property in question.



The tenant had requested information regarding the deposit and where it was held from the letting agent on 22 October and 2 November 2017 prior to the deposit being returned to the letting agent by LPS on 13 December 2017. This information was not provided to her.

The landlord was not involved in the process of lodging or requesting the return of the deposit. This was dealt with by the letting agent acting on behalf of the landlord.

In terms of the tenancy agreement of 24 April 2017 clause 31 two months notice is required by the tenant. The end date of the tenancy agreement is stated as 24 October 2017 and notice was given on 8 September 2017. Two months notice from 8 September 2017 under the terms of the agreement terminate the tenancy on 24 November 2017. The Application in terms of Rule 103 was lodged on 18 January 2018.

Reasons for Decision:

The tribunal considers that the landlord, through the actions of her letting agents Trusted Properties Fife Ltd in 2017 and Trusted Lettings in 2015, did not comply with the requirements of Regulations 3 and 42 of The Tenancy Deposit Schemes (Scotland) Regulations 2011.

Initially the deposit paid on 24 January 2014 was only lodged with a Tenancy Deposit Scheme on 24 January 2015, one year after payment. At the time the tenant was not advised of the information required in terms of Regulation 42 (2) (b), (e) and (f). As these tenancy agreements are historic the tribunal cannot make an award based on these failures.

The tenancy agreement of 24 April 2017 confirms receipt of the deposit by the landlord and states that the deposit will be held by SAFETY DEPOSIT SCOTLAND. Subsequent to the start date of the tenancy agreement on 24 April 2017, the deposit was not lodged with SAFETY DEPOSIT SCOTLAND and again no information regarding the date of lodging of the deposit or the scheme where it had been lodged or the information regarding return of the deposit were provided to the tenant after April 2017. This is not disputed by the Respondents. This constitutes non compliance with the requirements of Regulations 3 and 42 of The Tenancy Deposit Schemes (Scotland) Regulations 2011.

The lack of information in terms of Regulation 42 (2) as stated above resulted in the tenant not being able to contact the deposit scheme prior to the return of the deposit on 13 December 2017. The tenant had requested the information repeatedly from the letting agent but this had not been provided. She had contacted SAFETY DEPOSIT SCOTLAND, the scheme stated in the tenancy agreement of April 2017, and been advised they had no record of a deposit. The deposit had in fact been lodged and remained lodged with a different Scheme, LPS, and was returned to the landlord via the agent by LPS due to non participation of the tenant in the dispute resolution mechanism. The lack of involvement of the tenant in this process was at least in part caused by the non compliance of the landlord's agent with the requirements in Regulation 42.



Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 is a regulatory sanction to punish the landlord for non-compliance with the rules. The non-compliance with the Regulations is not as such disputed by the landlord, who has not provided any evidence that the required information had been given to the tenant. The landlord in this case had been unaware of any problems and, in the knowledge that she was a first time landlord, had employed the services of a letting agent to ensure they would do all that was necessary and appropriate to deal with the letting of the property, including dealing with the handling of the deposit. She feels let down by the letting agent and the tenant confirmed that all matters had been handled by the agent, not the landlord.

The landlord had chosen to have an agent act on her behalf and any failure to comply with the Regulation is thus attributed to the landlord in terms of the Regulations.

The letting agent provided no information about the deposit to the tenant in 2017 after the start of the new tenancy agreement on 24 April 2017 or after January 2014, when the deposit was in fact lodged with LPS. Whilst the tribunal considers the relevant breach to have occurred in 2017 after the last lease document was signed, even if one were to consider the relevant tenancy agreement to be the one of 2014 resulting in a continued tenancy for the property since then, the same lack of information provision applies to the deposit paid in 2014.

The Tribunal has discretion to award up to three months the amount of the deposit, in this case the upper limit would be £1500. The tenant specifically referred to her seeking to receive £500.

The Tribunal did not consider that the matter of the state of the property at the end of the tenancy should be taken into account in exercising its discretion, as the application in terms of Rule 103 of the Rules of Procedure relates not to the return of the deposit as such but to the sanction of non-compliance with the Regulations introduced under the Tenancy Deposit Scheme. Ultimately the Regulations were put in place to ensure compliance with the Scheme and the benefits of dispute resolution in cases of disputed deposit cases, which the Schemes provide.

Whilst ignorance of the law, and in this case ignorance by the landlord of the actions of the letting agent, is not an excuse, it is a matter the Tribunal considered was a mitigating factor.

Had the landlord herself handled the matter in the way the letting agent did and not provided the information to the tenant as required in Regulation 42, the Tribunal would have considered this a flagrant breach of the Regulations and would have considered a higher amount appropriate. However, in light of the explanations given by the landlord and the agreement of the tenant, that the actions of the agent not the landlord herself had led to the application being made, and in light of the Tenant asking specifically for the sum of £500 to be awarded in the application, the tribunal in a unanimous decision considered an award of £600 appropriate in all the circumstances.



Decision:

The First-tier Tribunal for Scotland (Housing and Property Chamber) grants an order against the Respondent for payment to the Applicant of the sum of £600.00 in terms of Regulation 10 (a) of The Tenancy Deposit Schemes (Scotland) Regulations 2011.

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.

Petra Hennig McFatridge

Legal Member/Chair

14.6.18

Date