



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/20/0928

Re: Property at Room MB4, 123 Wellington Road, Aberdeen, AB12 3BB (“the Property”)

Parties:

Mr Dawid Adamus, 19A Lamond Place, Aberdeen, AB25 3UT (“the Applicant”)

Ms Karen McKee, 349 Holburn Street, Aberdeen, AB10 7FQ (“the Respondent”)

Tribunal Members:

Gillian Buchanan (Legal Member)

Decision

At the Case Management Discussion (“CMD”) on 21 September 2020, which proceeded by telephone conference, the Applicant and the Respondent were both in attendance.

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

1. Background

This is an application under Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”) in terms of which the Applicant seeks an order against the Respondent for payment of a penalty to reflect the Respondent’s failure to timeously lodge a tenancy deposit paid in connection with a residential tenancy into an approved scheme.

2. Submissions for the Applicant

At the CMD the Applicant made the following submissions:-

- (a) That the Applicant’s tenancy of the Property began on 1 September 2019;
- (b) That he signed the tenancy agreement on 2 September 2019;
- (c) That the rent due in terms of the tenancy agreement was £350 per calendar month;

- (d) That the deposit payable in terms of the tenancy agreement was £250;
- (e) That he paid one months rent in advance plus the deposit in order to obtain the keys for the Property and move in;
- (f) That he paid rent in cash during the tenancy;
- (g) That the tenancy ended on 31 December 2019 when he moved out of the Property;
- (h) That he was asked to leave the Property by email from the Respondent dated 21 November 2019;
- (i) That he received a further email from the Respondent on 22 November 2019 to the effect that he would receive his deposit back from Safe Deposit Scotland;
- (j) That he received an email from Safe Deposit Scotland to the effect that the deposit had not been lodged on time;
- (k) That he took advice from Shelter and was advised that he had a Private Residential Tenancy of the Property and had not received adequate notice to leave;
- (l) That he received a Summary Cause Summons relative to proceedings for his removal at Aberdeen Sheriff Court;
- (m) That he recovered the deposit in full from Safe Deposit Scotland.

3. Submissions for the Respondent

- (a) That the factual background as narrated by the Applicant and as set out in paragraphs 2(a) to (h) and (m) above are accurate and not a matter of dispute;
- (b) That the Respondent asked the Applicant to vacate the Property on the grounds of anti-social behaviour;
- (c) That the deposit was not lodged timeously with Safe Deposit Scotland until 21 November 2019 due to an error;
- (d) That the deposit was lodged with Safe Deposit Scotland as soon as the error was discovered;
- (e) That the error took place due to the Respondent not following her own procedures for lodging deposits;
- (f) That the Respondent's procedure for lodging deposits is to update a spreadsheet of all rents received and deposits paid. On the first day of each month which is "rent day" she also pays into an approved scheme all deposits paid the previous month.
- (g) The Respondent could not advise the Tribunal if any other deposits had been overlooked during the month when the Applicant's deposit had been overlooked and not paid into an approved scheme.
- (h) The Applicant's tenancy was listed on the spreadsheet and included all monies paid;
- (i) That the Respondent has 7 properties and rents out up to 40-42 rooms when fully occupied and that the letting of the properties is her full-time occupation;
- (j) That the Property is in the Respondent's name.
- (k) That the Respondent had identified one previous incident in August 2020 of a tenant's deposit not being lodged timeously due to an administrative error.
- (l) That the Respondent appreciates that compliance with the Regulations is a serious matter.

4. Further submissions for Applicant

In response to the Respondent's submissions the Applicant made reference to another tenant, Mr Lucaz Patalas, who occupied another room in the property of which the Property formed part whose lease commenced in around March or April 2019 and whose deposit was also not lodged timeously with an approved scheme. Mr Patalas is believed to have vacated the property a couple of months ago.

5. Further submissions for Respondent

The Respondent accepted that Mr Lucaz Patalas' deposit was not timeously paid into an approved scheme and that there were now three identified instances of deposits not being paid over timeously in terms of the Regulations.

6. Reasons for Decision

The factual background is substantially not in dispute between the parties. The parties entered into a Private Residential Tenancy agreement on 2 September 2019. The tenancy was a "relevant tenancy" in terms of the Regulations.

The Applicant paid to the Respondent a deposit of £250. That deposit ought to have been paid into an approved scheme within 30 days of the tenancy commencing in terms of Regulation 3(1) of the Regulations. That did not happen and the deposit was paid into a scheme, namely Safe Deposits Scotland, on 21 November 2019, around 7-8 weeks later.

The Applicant's deposit was unprotected for a relatively short period of time and he recovered the deposit in full as a consequence of which there was no actual prejudice caused to him.

The Respondent is a commercial Landlord of many years standing with a number of properties and a substantial number of rooms for let within those properties. The Respondent accepted the importance of compliance with the Regulations and that the Tribunal took a failure to comply as a very serious matter. Three instances of failing to comply with the Regulations were identified. That is a significant breach.

Regulation 10 of the Regulations states:-

"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."

The Tribunal is satisfied that the Respondent did not comply with Regulation 3(1) as outlined above. In the circumstances concerned the Tribunal considers that a suitable sanction for that failure to comply is to pay to the Applicant a sum of £500.

Decision

The Tribunal orders the Respondent to pay to the Applicant a sum of £500 in terms of Regulation 10 of the 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.

Gillian Buchanan

Legal Member/Chair

21 September 2020