

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 Section 16 of the Housing (Scotland) Act 2014 and Regulations 3 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/19/2548

Re: Property at Flat 2F1, 90 South Clerk Street, Edinburgh, EH8 9PT ("the Property")

Parties:

Mr Ross Kelly, 2 The Crescent, Busby, Glasgow, G76 8HT ("the Applicant")

Mr Basharat Pervaze, 1 Hutchison Cottages, Edinburgh, EH14 1PX ("the Respondent")

Tribunal Members:

George Clark (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be granted without a Hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £2,600.

Background

By application, received by the Tribunal on 12 August 2018, the Applicant sought an Order for Payment in respect of the failure of the Respondent to lodge a tenancy deposit in an approved tenancy deposit scheme. He also sought an Order for Payment to have the deposit itself refunded to him.

The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties, commencing on 25 October 2018 at a monthly rent of £650. The Agreement contained a clause requiring the Applicant to pay an "Additional Month's Rent" of £650 at the start date of the tenancy which, at the end of the tenancy, the Respondent could use to meet any outstanding sums or accounts due by the Applicant, the cost of repairing or replacing any of the fittings and fixtures which have been broken, damaged or lost and the expense of making good any failure by the Applicant to fulfil any of the other conditions of the contract.

In a letter to the Tribunal dated 12 August 2018, the Applicant stated that he had rented a room in the Property for the academic year. Although the tenancy agreement referred to it as an "Additional Month's Rent", it was clear to him that the payment of £650 was, in fact, a deposit. He did not receive any notification that the deposit was secured in one of the approved schemes.

On 30 August 2019, the Tribunal advised the Parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written representations by 20 September 2019. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held at Riverside House, Gorgie Road, Edinburgh on the morning of 7 October 2019. The Applicant was present and asked the Tribunal to make the Order for Payment without a Hearing. The Respondent was not present or represented.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required and that it would determine the application without a Hearing.

The Tribunal considered the wording of the Tenancy Agreement relating to the "Additional Month's Rent". It stated that if the Applicant left the Property before the "end of the minimum term of the contract", which was stated to be 10 months, the Additional Month's Rent would be kept by the Respondent. The view of the Tribunal was that this clause in the Tenancy Agreement was unenforceable, as Private Residential Tenancies cannot be stated to be for a minimum or a fixed term.

The Tribunal was in no doubt that the payment of £650 was, in fact, a deposit, as it served exactly the same purpose as a deposit. The Tenancy Agreement stated in terms that the Respondent could use the money to meet any outstanding sums or accounts due by the Applicant, the cost of repairing or replacing any of the fittings and fixtures which have been broken, damaged or lost and the expense of making good any failure by the Applicant to fulfil any of the other conditions of the contract. The Tribunal held that the sum described as an "Additional Month's Rent" was a deposit, which should have been lodged in an approved tenancy deposit scheme.

Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") states that a landlord must, within 30 working 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 4 of the 2011 Regulations. Under Regulation 10 of the 2011 Regulations, if satisfied that the landlord did not comply with any duty in Regulation 3, the Tribunal **must** order the landlord to pay to the tenant an amount not exceeding three times the amount of the tenancy deposit.

The Tribunal regarded the Respondent's failure as serious. Whilst the Tribunal was not able to hold, on the basis of the evidence before it, that it had been a deliberate device used by the Respondent to avoid the 2011 Regulations, the Respondent's money had been at risk throughout the period of his tenancy and had still not been repaid to him, despite his having requested the Respondent to refund it. The

Respondent had offered no information to the Tribunal which could be regarded as a mitigating factor and had not accepted and acknowledged that he had been at fault. Having considered all the evidence before it, the Tribunal decided that an Order to pay three times the amount of the deposit was just, proportionate and fair. The Tribunal also upheld the application to have the deposit itself repaid to the Applicant, as no legal justification had been offered by the Respondent as to why it had been retained by him.

Decision

The Tribunal determined that the application should be granted without a Hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £2,600, £650 of which is the deposit and £1,950 of which is the sanction for failing to comply with Regulation 3 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.

G Clark

Legal Member/Chair

7 October 2019

Date