



Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Regulation 10(1) of the Tenancy
Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/18/0276

Re: Property at 52/6 Oxfords Avenue, Edinburgh, EH13 9JP ("the Property")

Parties:

Mr Michael Dobbie, 26/6 Firhill Drive, Edinburgh ("the Applicant")

Mr David Shand, 29 Oxfords Bank, Edinburgh, EH13 9LJ ("the Respondent")

Tribunal Members:

Graham Harding (Legal Member) and Tony Cain (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that in respect that the Respondent has failed to lodge the Applicant's deposit provided for in the tenancy agreement between the parties in accordance with the terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011 finds the Respondent liable to pay the Applicant the sum of £2040.00

Background

1. By application dated 30/1/18 the Applicant's representative Anne Mencil, CHAI, EZS House, 555 Gorgie Road, Edinburgh applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the tribunal") for an order for payment in that the Respondent had failed to lodge the Applicant's deposit of £680.00 paid to the Respondent at the commencement of the tenancy into an approved scheme in accordance with the provisions of the Tenancy Deposit Schemes (Scotland) Regulations 2011.
2. The tribunal accepted the application and the case was referred to a Case Management Discussion ("CMD") held at George House Edinburgh on 10th April 2018. The CMD was attended by the Applicant's representative Ms Mencil and the Respondent.

3. The Applicant's position was that the Respondent had failed to lodge the deposit in an approved scheme. This was accepted by the Respondent who explained he had not been aware of the regulations. He had not returned the deposit as the tenant had caused damage to the property.
4. For the Applicant Ms Mencil submitted that the Respondent's representations were irrelevant.
5. As there were issues in dispute the case was continued to a full hearing to take place on 4 June 2018. The tribunal requested that it be provided in advance of the hearing with a copy of the tenancy agreement for the period from 2/8/17 to 1/2/18; any evidence of the alleged damage to the property; any submissions on the law to be applied.
6. Although the Respondent was present at the CMD and was aware of the date of the full hearing he subsequently requested that the tribunal adjourn the hearing to allow him to go on holiday with his grandchildren in England. The tribunal considered this request and refused it on the grounds that it was not reasonable to allow an adjournment in all the circumstances.
7. By email dated 28 May 2018 the Respondent advised the tribunal that he was unable to attend the hearing but submitted 29 photographs of the alleged damage to the property together with further written submissions. These were forwarded to the Applicant and his representative in advance of the hearing.

The Hearing

8. The Hearing took place on 4 June 2018 at George House, 126 George Street, Edinburgh. It was attended by the Applicant and his representative Ms Mencil.
9. Ms Mencil re-iterated her position that the Respondent's representations were irrelevant. It did not matter whether the Applicant had caused damage to the property or not although it was the Applicant's position the Respondent's allegations were in any event unfounded. The Tenancy Deposit Scheme had been introduced so that there could be a means of resolving disputes between landlords and tenants over issues such as damage to property. By not lodging the Tenant's deposit in an approved scheme the Respondent had denied the Applicant the opportunity to resolve any dispute through the scheme. The Respondent had admitted that he had not lodged the funds in an approved scheme. It did not matter that he was new to being a landlord he ought to have complied with the legislation and by failing to do so the Applicant was entitled to make an application to the tribunal to claim payment of an amount up to three times the deposit.

10. In response to a question from the tribunal Ms Mencil confirmed that the Respondent had retained the whole of the Applicant's deposit. She was of the view that if the Respondent believed that the cost of putting the property into good order following the Applicant's departure from the property was in excess of the deposit the Respondent would have remedy through the court.
11. Mr Cobbie explained that he had lived in the property with a work colleague for four years before taking on the tenancy in his own name. In his opinion the condition of the property was in a better condition at the time he left than at the time of the commencement of the tenancy. Some of the rooms had been re-decorated by himself and his partner. There may have been some general wear and tear but that was to be expected. There may have been some belongings left in the property that he ought to have removed. The Respondent may have incurred a small cost for cleaning the property that the Applicant said he would have been prepared to meet. The Applicant did not think however that the Respondent ought to have retained the whole deposit.
12. The Applicant explained that after trying to recover his deposit from the Respondent he had gone to the Citizens Advice Bureau who had referred him to CHAI who had advised him on his rights to apply to the tribunal.
13. The Applicant explained that the Respondent had not provided a gas safety certificate for the property; had not provided carbon monoxide alarms; and did not have hard wired smoke alarms nor was the Respondent a registered landlord.
14. The tribunal referred the Applicant and his representative to the Respondent's written submissions and productions. Ms Mencil maintained that her position was the same that the submissions were irrelevant and submitted that the tribunal should award the Applicant three times the deposit by way of a sanction against the Respondent.

Findings in Fact

15. The Applicant's deposit of £680.00 was not placed by the Respondent in an approved scheme. The Respondent was therefore in breach of the Tenancy Deposit Scheme (Scotland) Regulations 2011.
16. The Respondent has retained the Applicant's deposit of £680.00 claiming that the Applicant was in breach of the terms of his tenancy agreement and caused wilful damage to the property.

Reasons for Decision

17. The legislation to require landlords to lodge tenants' deposits in a deposit scheme was introduced in Scotland on 1 July 2012. The scheme provides for an arbitration process to determine disputes between

landlords and tenants over issues such as damage to property at the cessation of a tenancy.

18. Anyone wishing to become a landlord should be aware of all relevant legislation before entering into a tenancy agreement. It is not in the tribunals view a reasonable excuse for the Respondent to say that as he was a first time landlord that he was unaware of the legislation.
19. It did appear to the tribunal from what was said on behalf of the Applicant and from the written submissions by the Respondent that there had been other failings on the part of the Respondent such as not being a Registered landlord or the property not having a gas safety certificate or appropriate alarms but these factors have not influenced the tribunal in reaching its decision.
20. Similarly the tribunal did not accept that the Respondent's submissions with regards to the Applicant's alleged damage to the property had any bearing on the Applicant's claim. They were irrelevant. If the Respondent wished to pursue a claim against the Applicant for damage to his property no doubt he can do so.
21. The issue for the tribunal to determine is essentially: "Did the Respondent lodge the Applicant's deposit in accordance with Regulation 3?" If the answer is in the negative then in terms of Regulation 10(1) the tribunal must award the applicant an amount up to three times the deposit.
22. The amount to be awarded is at the discretion of the tribunal. In reaching its decision the tribunal has considered the fact that the Respondent has rented out the property for a substantial period of time throughout which the Applicant's deposit has not been in an approved scheme. The tribunal has also taken into account the fact that the Respondent has retained the whole of the Applicant's deposit and the Applicant has been deprived of applying to a Scheme Administrator for its return or to go to arbitration.
23. In all the circumstances the tribunal are of the view that an award of three times the deposit namely £2040.00 is appropriate.
24. The decision of the tribunal is unanimous.

Decision

The tribunal finds the Respondent liable to pay to the Applicant the sum of £2040.00

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.

GRAHAM HARDING

Legal Member/Chair

Date

4/6/18