



**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/18/1301

Re: Property at 19 Christchurch Place, East Kilbride, G75 8RA (“the Property”)

Parties:

Miss Laura Gordon, 26 Invercargill, Eastkilbride, G75 8RE (“the Applicant”)

Mr Iain Dow, 23 Wellington, East Kilbride, G75 8RB (“the Respondent”)

Tribunal Members:

Rory Cowan (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has failed to comply with his duties under Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (the 2011 Regulations) in that he failed to pay the deposit into an approved tenancy deposit scheme or issue the prescribe information in terms of regulation 42 of the 2011 Regulations within the required time, and orders that the Respondent pay to the Applicant the sum of £150.

Background

By application received by the Tribunal on 25th May 2018, the Applicant sought an order for payment of a penalty under Regulation 10 of the 2011 Regulations as a result of the Respondent’s failure to pay the Applicant’s security deposit relative to her tenancy at 19 Christchurch Place, East Kilbride G75 8RA (the Property) into an approved tenancy deposit scheme within the prescribed timescale all in accordance with the provisions of the 2011 Regulations.

The Application was accepted by the Tribunal and a Case Management Discussion was fixed for 22 August 2018 at 2pm at the Glasgow Tribunals Centre, 20 York Street, Glasgow.

With the Application, the Applicant lodged a partial copy of a lease dated 8 March 2010 and a partial copy lease dated 8 March 2011. She also lodged a receipt confirming the return of keys for the Property as well as a copy of a deposit protection certificate issued by SafeDeposits Scotland dated 23 January 2018. The Respondent lodged written representations on 14 August 2018.

The Case Management Discussion

The Applicant attended the CMD with her mother Anne-Marie Gordon as a supporter. The Respondent attended also with his sister as a supporter a Mrs Elaine McCosh.

The purpose of the CMD as well as the nature of the Application was explained to both parties.

It was agreed between the parties that a security deposit of £440 had been paid by the Applicant on or around 8 March 2010. The Respondent indicated that he had received it some months later from his then letting agents.

It was also accepted that the lease that commenced on 8 March 2010 ended on 7 March 2011 and that a subsequent lease was entered into for the Property on 8 March 2011 and that this lease ended on 7 March 2012. Both parties agreed that this was the last written lease and that the lease eventually ended on 17 May 2018. Neither party was able to confirm whether the lease continued by way of contractual extension (for example month to month) or by operation of tacit relocation. For the purposes of the Tribunal's considerations this did not matter as, one way or another, the security deposit required to be paid into an approved scheme at some point in either 2011 or 2012 depending on what date the lease renewed.

It was accepted by the Respondent that the security deposit was not paid into an approved scheme until 23 January 2018. He indicated that this was due to ignorance of the requirements of the 2011 Regulations. He explained that he had paid the security deposit into a scheme following a discussion with Shelter whom he had contacted for advice on best practice in relation to repairs. He indicated that when he had found out, he paid the security deposit into an approved scheme immediately. The Applicant confirmed that she had not raised the issue of the security deposit with the Respondent before that and only realised that it had not been paid in earlier when she received communications from SafeDeposits confirming protection of the Deposit.

The Respondent also confirmed that he had not issued any further notice to the Applicant and had thought that SafeDeposits issuing of the Deposit Protection receipt was all that was required.

Although the lease ended on 17 May 2018, both parties confirmed that the security deposit was in dispute. This, they both confirmed, was the subject of adjudication via SafeDeposits. That adjudication has still to be resolved.

The Tribunal then discussed the terms of the Respondent's written representations. These consisted of details of damage that the Applicant was alleged to have caused

to the Property and the Respondent wanted to submit same as a "counter action for consideration". It was explained to the Respondent that it was not competent for the Tribunal to accept a "counter action" in relation to the Application and that, if the Respondent felt he had a claim against the Applicant arising from the Applicant's tenancy, that should be dealt with by way of separate application. He was directed to take legal advice in relation to that if he wished to pursue such a claim.

It was therefore clear from the discussions that the Respondent accepted he had not complied with his duties under the 2011 Regulations. As such a penalty in terms of Regulation 10 of the 2011 Regulations was appropriate. The only issue remaining was the level of the penalty.

The parties were then asked for their comments on this issue.

The Respondent indicated that:

- He was not aware of the requirements of the 2011 Regulations;
- That when he found out he paid the security deposit into an approved scheme and that it has been there since;
- That this payment was not as a result of a dispute with the Applicant and as a result of his own enquiries;
- That the Applicant has suffered no prejudice as the deposit has been protected and their dispute is subject to adjudication by SafeDeposits Scotland;
- That the Property is his first and only private tenancy and that he has no intention of leasing the Property in the future;
- That the Property was his former home that he let out whilst he was working abroad;
- That the Applicant had not complained during her tenancy and that all repairs and maintenance were attended to promptly;
- He also stated that he has no income and is the sole carer for his elderly mother.

The Applicant stated the following:

- That she had resided in the Property for 8 years and had been an "outstanding tenant";
- That the Respondent had failed to lodge the security deposit timeously with an approved scheme or issue the prescribed information;
- That this was his responsibility and he failed in it;
- That no gas or electrical certificates were provided;
- That she paid her rent on time.

Findings in Fact

- 1) That the Applicant paid to the Respondent a security deposit of £440 for the property at 19 Christchurch Place, East Kilbride G75 8RA on or around 8 March 2010.
- 2) That the start date of the tenancy was 8 March 2010.

- 3) That the tenancy ended on 17 May 2018.
- 4) That the Respondent failed to issue the prescribed information under Regulation 42 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 to the Applicant.
- 5) That the security deposit was not paid into an approved tenancy deposit scheme until 23 January 2018.
- 6) That the Respondent is in breach of his duties under Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.
- 7) That the Respondent is liable to pay a penalty under Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Reasons for Decision

The Tribunal considered that, standing the admissions by the Respondent, that there was sufficient information in front of it to allow the Tribunal to determine the issue without the need for a hearing. All material facts were not in dispute and the only live issue for the Tribunal to consider was the level of an appropriate penalty.

The Tribunal heard both parties on the issues and noted their comments.

In the view of the Tribunal, the appropriate approach in claims of this kind is to consider what sanction would be fair, proportionate and just having regard to the seriousness of the non-compliance. It also takes the view that the maximum sanction of up to 3 times the level of the deposit should be reserved for the most serious cases of non-compliance.

In this case, the non-compliance was admitted by the Respondent. It was as a result of ignorance of the law. Whilst not a defence to such a claim, the Tribunal took the view that there was nothing to suggest this was a case of wilful default. Indeed the Respondent had only ever leased the Property and not any others. As such this was not indicative of any systematic default.

Crucially, the Respondent stated that he had found out about his duties in a discussion with Shelter in relation to another matter and not in relation to the issue being raised by the Applicant. Upon doing so, he immediately paid the security deposit into a scheme. As such the Applicant has received the protection for her deposit that the 2011 Regulations were designed to give and currently there is a dispute in relation to the deposit being adjudicated on by SafeDeposits Scotland. However, the purpose of Regulations 9 and 10 of the 2011 Regulations is not to provide compensation but to ensure compliance with a landlord's duties.

As such, where there is non-compliance, the Tribunal has to consider what level of penalty is appropriate under Regulation 10 of the 2011 Regulations. Taking into account all relevant matters stated on behalf of both parties, the Tribunal decided that the appropriate penalty in this case was £150.

Decision

The Tribunal finds the Respondent liable to pay the Applicant the sum of £150.00.

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.

Rory Cowan

Legal Member/Chair

22 August 2018

Date