

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for payment where a landlord has not paid the deposit into an approved scheme in terms of Rule 103 of the Procedure Rules.

Chamber Ref: FTS/HPC/PR/18/2995

Re: 93 Bluebell Wynd, Wishaw, ML2 0PP ("the Property")

Parties:

Mrs Susan Rennie and David Rennie residing at 54 Carbarns East, Wishaw, ML2 0DG ("the Applicants")

James Melvin, Motherwell CAB, Unit 10, The Fountain BC, Ellis s7, Coatbridge, ML5 53AA ('The Applicant's Representative')

John Telfer, 10 Curriefield View, Cleland, Motherwell, ML1 5GQ ("the Respondent")

Tribunal Member: Jacqui Taylor (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent should pay the Applicants the sum of £1300 by way of sanction under Regulation 10(a) of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

1. Background

Mrs Susan Rennie, one of the Applicants submitted an application to the Tribunal for payment where a landlord has not paid the deposit into an approved scheme in terms of Rule 103 of the Procedure Rules, which application was dated 5th November 2018.

2. Documents lodged with the Tribunal.

Documents lodged with the Tribunal by the Applicants were:

2.1 A copy of the Short Assured Tenancy Agreement dated 21st June 2012.

2.2 A copy of the Private Residential Tenancy Agreement dated 15th February 2018.

- 2.3A copy of a receipt dated 21st June 2012 confirming that rent and the deposit of £650 had been paid in respect of the property 93 Bluebell Wynd.
- 2.4A copy of the Deposit Certificate from Safe Deposits Scotland confirming that the deposit of £650 had been received by them on 13th September 2018.

3. The Original Case Management Discussion.

The Note of the Original Case Management Discussion was in the following terms:

- ‘ 1. By application received on 6th November 2018 the applicant applied to the tribunal for an Order for payment under regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.*
- 2. The first CMD took place on 14th January 2019. The applicant was present and represented by Mr James Melvin from Motherwell Citizens Advice Bureau. The respondent did not attend.*
- 3. Having regard to Rule 29 and having been satisfied that notice had been given in terms of Rule 24(1) of the Rules, the tribunal proceeded with the CMD in the absence of the respondent.*
- 4. The applicant advised the Tribunal that she moved into the property on 21st June 2012. David Rennie also moved into the property at that time. A deposit of £650 was paid to the respondent. The tenancy continued until a new tenancy was signed in on 15th February 2018.*
- 5. The applicant advised that at that time, her husband, David Rennie had been asked to provide proof of residence for the purposes of his employment. The applicant and David Rennie signed a new tenancy agreement with the landlord on 15th February 2018. The tenancy deposit was carried over from the original tenancy agreement.*
- 6. The Tribunal was of the view, that the conduct of the previous tenancy was a relevant factor to be taken into account in the assessment of any amount payable in terms of the application.*
- 7. The applicant confirmed that she had given notice as required to the landlord and the tenancy had terminated on 5th September 2018. Accordingly the application was timeous and complied with Regulation 9.*
- 8. The Tribunal advised the applicant that the remedy set out in the regulations was a joint remedy available to joint tenants. The Tribunal required to be satisfied that the application was a joint one, or made with the consent of David Rennie.*
- 9. The applicant confirmed that she and Mr Rennie were married and undertook to provide a mandate from him confirming that he was aware of the proceedings and consented to her and Mr Melvin representing his interests.*
- 10. The Tribunal advised the applicant that in the absence of a mandate a final decision would not be made at the CMD on 14th January 2019 however the applicant's representative made a number of further submissions in relation to the level of award sought.*
- 11. The Tribunal noted that the deposit had been placed in a tenancy deposit scheme on 13th September 2018 after the applicant had removed from the property.*
- 12. There had been a dispute regarding the deposit and an adjudication had recently determined that £374 should be returned to the applicant.*
- 13. The applicant's representative submitted that the terms of the tenancy agreement signed on 15th February 2018 made it clear that the landlord should lodge*

the tenancy in an appropriate deposit scheme. The Tribunal noted that the terms of paragraph 17 of the agreement were very clear on that point. The applicant's representative submitted that the landlord must have known about his obligations in relation to the deposit and that this was a relevant factor in terms of the level of award made.

14. The applicant's representative also advised that the landlord had other tenanted properties in the past and as such, should have been aware of his statutory obligations.

15. The tenant's representative also advised that the landlord's lack of engagement in the present proceedings was a relevant consideration in terms of the level of award.

16. The Tribunal notes that based on the evidence lodged and the verbal representations at the CMD there has been a breach of the tenancy deposit regulations. The tribunal will require to assess the level of award and will take into account the submissions and documents lodged by the applicant.

17. The Tribunal is unable to make a final determination until the position of the joint tenant is clarified.

Outcome

Case adjourned to a further CMD on 4th February 2019 to allow the applicant to lodge documents confirming the position of the joint tenant, David Rennie, residing at 54 Carbarns East, Wishaw, ML20DG in respect of the present proceedings. A signed mandate from Mr Rennie, authorising the applicant's representative to act on his behalf will be sufficient to allow the case to proceed.

The tribunal note that Mr James Melvin is the authorised representative for the applicant and may represent her, in her absence at the CMD assigned for 4th February 2019.'

4. Continued Case Management Discussion

The Tribunal fixed a Continued Case Management Discussion which took place on 4th February 2019 at 2pm at The Glasgow Tribunal Centre, 20 York Street, Glasgow.

The Respondent was served with notice of the Case Management Discussion by recorded delivery letter dated 16th January 2019. The recorded delivery letter had been signed for by the Respondent at 9.04 am on 18th January 2019.

Mrs Susan Rennie, one of the Applicants, was present at the Continued Case Management Discussion and was represented by James Melvin of Motherwell CAB.

The Respondent was also present at the Continued Case Management Discussion.

4.1 Preliminary Matter.

Mrs Susan Rennie had provided the Tribunal Administration with a letter signed by David Rennie dated 18th November 2018 stating that he was happy for the proceedings to go ahead in his absence and he confirmed that James Melvin is authorised to proceed with the action on their behalf.

Mrs Taylor advised Mrs Susan Rennie that she considered it appropriate for the application to be amended under Rule 32 of the Tribunal Rules to add David Rennie as an applicant. The parties made no objection and accordingly Mrs Taylor directed that David Rennie be added to the application as a joint applicant.

4.2 Oral Representations made by the Applicant and their Representative.

James Melvin advised that he had little to add to the representations reflected in the original CMD Notes, however his comments regarding the absence of the Respondent should be disregarded.

He explained that if the Respondent had not properly read the terms of the Private Residential Agreement he considered this to be reckless.

4.3 Oral Representations by The Respondent.

The Respondent explained that he had been unaware of the regulations which required tenancy deposit to be lodged into a deposit protection scheme. He had consulted his lawyer once the Private Residential Tenancy came to an end and was advised that he was only required to lodge the deposit into a scheme from May 2013. He explained that when the new Private Residential Tenancy had been signed no money had changed hands. The new Private Residential Tenancy had been entered into for the convenience of the Tenants. He had downloaded the draft lease from the internet and he had not read it properly. He confirmed that he had populated the style lease with the parties' details and the details of the lease, including the deposit. He accepted that the Private Residential Tenancy had been signed by all parties and witnessed.

He explained that relations with the Tenants had been good until the time of the end of tenancy inspection in September 2018.

He emphasised that as soon as he became aware of the Tenancy Deposit Regulations he lodged the deposit with Safe Deposits Scotland. He confirmed that the deposit had been adjudicated by the Safe Deposit Adjudication scheme.

He advised that he does own other properties but he does not consider himself to be a commercial landlord. One of his other properties is leased to a friend at a low level of rent.

5. Findings of Fact.

5.1 Mrs Susan Doak or Rennie, one of the Applicants, was Tenant of the Property and the Respondent was Landlord of the Property in terms of the lease between them dated 21st June 2012. The lease was a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988.

5.2 The Applicant, and her husband David Rennie entered into a fresh lease of the Property with the Respondent dated 15th February 2018. The lease was a Private Residential Tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016. The commencement date of that lease was 15th February 2018. That lease superseded the earlier short assured tenancy.

5.3 The Applicants vacated the Property on 5th September 2018.

5.4 Mrs Susan Rennie paid the deposit of £650 to the Landlord on 21st June 2012, prior to the commencement of the short assured tenancy. The deposit continued to be held by the Landlord under the replacement Private Residential Tenancy.

5.5 The deposit had been placed in a tenancy deposit scheme on 13th September 2018, after the applicant had removed from the Property.

6 Decision.

The Respondent stated that he had been under no obligation to lodge the deposit under the earlier short assured tenancy. This is not correct. The Tenancy Deposit (Scotland) Regulations 2011 came into force on 7th March 2011. The Tenancy Deposit Schemes became operational on 2nd July 2012. The Transitional arrangements provided that deposits paid between 7th March 2011 and 1st October 2012 had to be deposited with the Safe Deposit Scheme by 13th November 2012.

In assessing the level of sanction the Tribunal considered the parties representations. They also considered the following cases:-

- Kirk v Singh 2015 SLT Sh Ct 111

In this case the Sheriff considered the whole circumstances and decided that whilst the defender's default could be characterised as serious it was not at the most serious end of the scale and it is also necessary to have regard to the mitigating circumstances advanced by the defender. Accordingly, in his opinion, the fair, proportionate and just sanction in that case, having regard to the maximum sanction available, was £500. The deposit in that case was £380.

- Cooper v Marriot 2016 SLT (Sh Ct) 99

In this case the respondent was ordered to pay the applicant double the deposit, less £50 representing the estimated damage to a table, by way of sanction for flagrant and wilful disregard of the terms and purpose of the regulations. It was held that landlords who were in such blatant breach could never mitigate their own conduct and failing by reference to the character or conduct of the tenant, and even if it could be considered relevant to the assessment of the sanction, there was no conclusive basis upon which the allegations made could be held to be substantiated; the respondent had to have known of the tenancy deposit scheme where it was mentioned in the tenancy agreement, even though ignorance was not an excuse, and the fact remained that the deposit was held by the respondent, unprotected by the regulations, for two years, as a result of which the applicant had been deprived of his right to invoke the dispute resolution service provided under Pt 6 of the regulations to settle issues about dilapidations at the end of the tenancy; further, the regulations did not recognise the status of amateur landlord but were applicable to all landlords regardless of the scale in which they operated.

The Tribunal acknowledge that in this application the Respondent advised that he was unaware of the regulations at the time the Private Residential Tenancy was signed. He had not properly read the lease. The lease was entered into purely for the convenience of the Tenants and he did not pay attention to its terms. In his view there had been no obligation on him to lodge the deposit with a tenancy deposit scheme under the original short assured tenancy.

The Tribunal found that the new Private Residential Tenancy superseded the previous short assured tenancy. The Tribunal took the view that the Respondent must have known about the Tenancy Deposit Regulations as they are referred to at clauses 13 and 17 of the Private Residential Tenancy Agreement. Under the original Short Assured Tenancy the Landlord had been under an obligation to lodge the deposit with a Tenancy Deposit Scheme since 2012, due to the transitional arrangements explained. The Deposit had been unprotected throughout the whole period of the Private Residential Tenancy, which is the lease which this application is concerned with. However the Tribunal acknowledge that the Respondent had lodged the deposit with Safe Deposits Scotland, albeit after the end of the Private Residential Tenancy and the Applicants had the benefit of the Deposit Adjudication Scheme.

In the circumstances the Tribunal considers it to be fair, proportionate and just to sanction the Respondent for non compliance by awarding the Applicants a sum of £1300 being the equivalent of two times the deposit of £650.

The Tribunal orders the Respondent to pay the Applicants the sum of £1300 by way of sanction under Regulation 10(a) of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

7. 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.

J Taylor

..... Legal Member

4th February 2019

