



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 Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/19/0032

Re: Property at 32 Mossgiel Avenue, Mauchline, KA5 6BG (“the Property”)

Parties:

Miss Chelsea Sneddon, 88 Jean Armour Drive, Mauchline, KA5 6BG (“the Applicant”)

Mr Michael Millar, 16 Harewood Avenue, Doncaster, DN3 1PD (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent had failed to comply with the duties imposed on him by Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 and made an Order for Payment by the Respondent to the Applicant of the sum of £500.

Background

By application, received by the Tribunal on 8 January 2019, the Applicant sought an Order from the Tribunal in respect of the Respondent's failure to lodge a deposit of £300 in an approved tenancy deposit scheme. The application was accompanied by a copy of a Short Assured Tenancy Agreement between the Parties, commencing on 1 September 2015 requiring a deposit of £300. The Tribunal was also provided with a note, signed by the Applicant on 30 March 2017, confirming the rent from 23 April 2017 and stating that it was agreed by the tenant that the landlord could retain the full deposit, due to damage caused to the front door of the Property. The Applicant also provided the Tribunal with evidence that the tenancy had ended on 11 November 2018.

A Case Management Discussion took place on 2 April 2019. On 28 March 2019, the Respondent had advised the Tribunal that he was not defending the application and that he had now lodged the deposit in a tenancy deposit scheme. In an e-mail to the Tribunal of 25 March 2019, he had proposed paying the deposit back to the Applicant in £50 instalments, but this offer had, on 27 March 2019, been refused by the Applicant.

At the Case Management Discussion, the Applicant submitted that there were various repair issues with the Property which had not been attended to by the Respondent. She also stated that her mother had attended at the Property to speak to the Respondent and ask that the deposit be returned, but he had refused to do so, stating that there were rent arrears. The Legal Member at the Case Management Discussion considered that, having regard to the submissions by the Applicant in relation to the alleged conduct of the Respondent in relation to the deposit, it was appropriate to send the case to a hearing in order that the Respondent was provided with an opportunity to address the Tribunal on any relevant facts which he believed should be taken into account before the Tribunal determined the appropriate award to be made.

In a Direction, made on 11 April 2019, the Tribunal required the Parties to provide documentation from SafeDeposits Scotland showing that the deposit has now been lodged with them. This was provided prior to the Hearing and confirmed that the deposit of £300 had been received by SafeDeposits Scotland on 28 March 2019.

The Respondent made written representations, received by the Tribunal on 8 May 2019. He stated that at the time the Applicant was moving in, his wife was seriously ill and he was caring for her. As a result, he had forgotten to lodge the deposit as required. There had been no mention of it from the Applicant until her mother had "threatened" him with proceedings at the time the Applicant was leaving the Property. He provided copies of correspondence between the Parties in which he detailed 29 items of damage allegedly caused by the Applicant and the Applicant refuted his claims. The Respondent contended that it had cost him hundreds if not a thousand pounds to repair the damage caused by the Applicant and that the Applicant's opinion of the facts was stretched and bent in an attempt to further her claim.

On 9 May 2019, the Respondent told the Tribunal that he had been unable to find a record of having received the deposit and posed the question as to whether the Applicant could prove by way of bank details that she had actually paid it

Hearing

A Hearing took place at Russell House, King Street, Ayr, on the afternoon of 14 May 2019. The Applicant was present, along with her mother, Jane Ann Sneddon. The Respondent was present and was accompanied by his wife, Mrs Janice Millar.

The Tribunal explained that it was not able to consider any issues regarding how much, if any, of the deposit, should be refunded to the Applicant. That was a matter for SafeDeposits Scotland. The Tribunal also advised the Parties that it had concluded, on the balance of probabilities, that the deposit had actually been paid at the commencement of the tenancy. Accordingly, the matter for the Tribunal to decide was a very narrow one, namely the amount that the Respondent should be required to pay to the Applicant as a result of his failure to comply with the Regulations.

The Respondent told the Tribunal that he had simply forgotten to lodge the deposit at the time. His wife's illness took priority and he was concentrating on his family.

The Applicant stressed that the Respondent had said that he had not been made aware of his failure until the tenancy ended, but he had still not lodged the deposit between November 2018 and March 2019.

Reasons for Decision

Under Regulation 3(1) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”), 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 certain information required under Regulation 42 of the 2011 Regulations (principally, the amount and date of lodging the deposit and details of the scheme administrator).

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 considered carefully the written representations, the Note of the Case Management Discussion and the evidence given at the hearing.

The Tribunal had told the Parties at the hearing that it was not part of its jurisdiction to decide how much, if any, of a deposit should be refunded to a tenant. That was a matter for determination, after representations, by the tenancy deposit schemes, in this case, SafeDeposits Scotland. The Respondent had not lodged the deposit until the present proceedings were under way, but it had now been lodged and it would be for SafeDeposits Scotland to decide what should happen with it. The scheme administrators would also have to consider the note of 30 March 2017, in which the Applicant had acknowledged that the Respondent could retain the full deposit and the Applicant’s contention that she had signed the document under duress.

The Respondent had admitted that he had failed to comply with Regulation 3 of the 2011 Regulations and the sole function of the Tribunal was to decide on the amount that the Respondent should be ordered to pay to the Applicant, taking into account the Respondent’s representations as to why he had not lodged it and the Applicant’s evidence in relation to her request for it to be repaid to her.

The Tribunal accepted that the Respondent had been caring for his seriously ill wife at the time of the commencement of the tenancy and that he might, as a result, have forgotten to lodge the deposit at that time, but that did not excuse his failure to lodge it at any time throughout the period of the tenancy, from 1 September 2015 to 11 November 2018. It is the clear responsibility of landlords to comply with all relevant legislation and regulations and, whilst the Respondent’s original failure was understandable, it was not excusable.

The Tribunal considered the Respondent’s e-mail of 9 May 2019, but rejected his argument that the Applicant might not have paid a deposit as he could find no record of having received it. He had intimated in his e-mail of 28 March 2019 that he was not defending the action. There was a clear reference to the deposit in the note, prepared by him and signed by the Applicant on 30 March 2017 and in the lease extension documentation to which it was attached. The presumption must be that a deposit of £300 had been paid at the commencement of the tenancy and it was not up to the Applicant to prove that at this stage.

The Tribunal did not consider the Respondent’s failure to be of the most egregious nature, so was not prepared to order the maximum payment permitted by the Regulations, which would be £900. The view of the Tribunal was, however that there had been an ongoing failure over a protracted period and that the Applicant’s funds had been at risk until the Respondent eventually lodged the deposit on 28 March

2019. In addition, the Respondent had refused to refund any part of the deposit at the termination of the lease, thus denying the Applicant the opportunity she ought to have had to contest his claims about her having caused damage to the Property. The Regulations exist precisely to avoid such situations as have arisen between the Parties in this case and the Applicant had been required to apply to the Tribunal. Accordingly, the failure must be regarded as serious. Having considered all the evidence, the Tribunal was of the view that the appropriate amount to order the Respondent to pay to the Applicant was £500.

Decision

The Tribunal determined that the Respondent had failed to comply with the duties imposed on him by Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 and made an Order for Payment by the Respondent to the Applicant of the sum of £500.

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.


Legal Member/Chair

14 May 2019

Date