

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”) and Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/PR/19/0903

Re: Property at 2/R, 305 St George’s Road, Glasgow, G3 6JQ (“the Property”)

Parties:

Miss Fiona Macleod, 6 Heatherhill, Whiting Bay, Isle of Arran, North Ayrshire, KA27 8QH and Mr Jeffrey Macdonald and 1/3, 14 Battlefield Gardens, Glasgow, G42 9JW (“the Applicants”)

Places for People Homes Limited, care of Touchstone, Stanley House, Clarence Dock, Leeds, LS10 1PZ (“the Respondent”)

Tribunal Member:

Susanne L. M. Tanner Q.C. (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that an order must be made in terms of Regulation 10 of the 2011 Regulations requiring the Respondent to pay to the Applicants the sum of ONE HUNDRED AND FIFTY POUNDS (£150.00) Sterling

1. Procedural background

1.1. On 18 March 2019, the Applicant made an application (“the Application”) to the tribunal.

1.2. The Applicant attached to the Application:

1.2.1. A copy of the Short Assured Tenancy Agreement dated 25 July 2017 between the Applicants and the Respondent in respect of a tenancy of the Property;

1.2.2. Copy email correspondence between the Second Applicant and Amy Goodlass of the Respondent;

1.2.3. A copy of the AT5 form dated 25 July 2017; and

1.2.4. Letter from Steven Vernan at Touchstone to Applicants dated 24 July 2017.

1.2.5. Certificate from Safe Deposits Scotland dated 24 October 2017, in respect of the Applicants' deposit of £900 for the Property.

1.3. On 28 March 2019 the Application was accepted for determination by the tribunal.

1.4. By letter of 1 May 2019, the tribunal notified the parties that the Application had been referred to the tribunal and that a Case Management Discussion had been fixed for 3 June 2019 at 1400h at Glasgow Tribunals centre, 20 York Street, Glasgow. Parties were advised that the tribunal may do anything at a Case Management Discussion which it may do at a hearing, including making a decision on the application. Parties were advised that if they do not attend the Case Management Discussion, this will not stop a decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair. The Respondent was invited to submit any written representations it wished by 17 May 2019.

1.5. On 8 May the Respondent submitted a letter attaching:

1.5.1. a statement of account showing that the Applicants' £900 deposit was sent over to SafeDepositsScotland on 20 October 2017;

1.5.2. a Deposit Protection Certificate dated 24 October 2017 and

1.5.3. copy prescribed information to both tenants in terms of Regulation 42 of the 2011 Regulations.

Within the documentation the Respondent explained that its Bath office had only been dealing with the properties since January 2018 and the Leeds Office which had previously dealt with the properties had since closed down. The Respondent offered its apologies to the tribunal in the delay for the deposit being sent over, stating that it was due to an administrative error that it had been missed. Once noticed it was immediately sent over as per the enclosed statement which showed receipt on 25 July 2017 and the deposit being sent to SDS on 20 October 2017.

2. CMD – 3 June 2019 at 1400h at Glasgow Tribunals Centre, 20 York Street, Glasgow

- 2.1. The Second Applicant, Mr Macdonald attended the CMD for himself and on behalf of the First Applicant Miss Fiona Macleod.
- 2.2. The tribunal waited until 1420h and nobody attended from the Respondent company. The tribunal clerk contacted the Respondent's offices by telephone and spoke to Ms Goodlass who indicated that the Respondent had submitted documentation on 8 May 2019 and wished to rely on that documentation and that nobody would be attending the CMD. The tribunal Clerk stated that the documentation had not been scanned onto the Case Management System of the tribunal and asked the Respondent if a copy of the documentation could be emailed. Ms Goodlass sent the documentation, as noted above, and it was copied for the tribunal Chair and the Second Applicant.
- 2.3. Mr Macdonald was provided time to read the letter and attached documentation. Mr MacDonald stated that he had had sufficient time to consider the documentation, including the explanation tendered by the Respondent.
- 2.4. The tribunal chair noted that in its letter of 8 May 2019, the Respondent had admitted the breach of the Regulations in respect of the late lodging of the deposit. The tribunal chair further noted that the Respondent had provided an explanation with 6 days of service of the Application documentation and that the said explanation was an administrative oversight due to an internal office closure.
- 2.5. The tribunal chair noted that the Regulations require that the deposit is lodged within 30 working days, and calculated that in this case that would have been 5 September 2017 and in this case it was lodged on 24 October 2017, which was 55 working days, therefore it was lodged 25 working days late.
- 2.6. The tribunal chair asked Mr Macdonald if he had any submissions he wished to make beyond what was stated in the Application paperwork. Mr Macdonald stated that he had gone to the effort of putting together the Application with his former flatmate. He said that they would not have done so if they had had a normal experience with the tenancy. He stated that the Respondent was a difficult company to deal with. He stated that at some point during the tenancy they were advised that it was no longer the Leeds office dealing with the tenancy. He stated that there were numerous property managers, possibly five or six in 18 months and that there were issues with handover as between them. He stated that the deposit was paid to the Respondent the week before he and his flatmate moved in. They paid a month's rent plus a little more, plus the deposit. The payment was not sent to the deposit protection company until 20 October 2017. Mr Macdonald accepted that he did not ask the Respondent back in October 2017, when they received the Certificate, why it had not been lodged in time. He said that the reason for not asking at that time was that he assumed that it was due to un-professionalism. He stated that they had already experienced some repairs issues at the time that they moved in. Mr Macdonald

- stated that he did not complain to the Respondent about late lodging of the deposit at any time before making the application to the tribunal. He accepted that the application documentation received by the Respondent on 2 May 2019 was the first notice that the Respondent had about the complaint.
- 2.7. Mr Macdonald stated in response to the Respondent's explanation for late lodging, provided in its letter of 8 May (received by him at the CMD) that the Respondent should have still paid the deposit within the prescribed timescale despite what was going on within their organisation.
 - 2.8. Mr Macdonald stated that he accepted that the breach is a relatively small amount of time, being 25 working days. He stated that he was seeking a payment order of the amount of the deposit.
 - 2.9. The tribunal chair asked what happened with the deposit at the end of the tenancy. Mr Macdonald replied that it had been returned in full (after he challenged a suggestion by the Respondent in a checkout letter that there may be a deduction for cleaning charges if receipt were not provided). In fact, nothing was deducted from the deposit and they received the full £900 deposit back from the deposit protection company.

3. Findings in Fact

- 3.1. The Applicants and Respondent entered into a tenancy dated 25 July 2017 for the initial period 25 July 2017 to 24 January 2018. The tenancy continued by tacit relocation thereafter until it came to an end on 31 January 2019 by agreement.
- 3.2. The Application to the tribunal was made on 18 March 2019, which was within three months of the end of the tenancy.
- 3.3. The Applicants paid a deposit of £900.00 on or about 25 July 2017.
- 3.4. The deposit should have been lodged with a deposit protection company by 5 September 2017.
- 3.5. The Respondent sent the Applicants' deposit to SafedepositsScotland on 20 October 2017.
- 3.6. Safe Deposits Scotland lodged the Applicants' Deposit on 24 October 2017 and sent a Deposit Protection Certificate to the Applicants.
- 3.7. The deposit was lodged within 55 working days of the start of the tenancy, which is 25 working days late.
- 3.8. The Applicants received their whole deposit back after the end of the tenancy, via the deposit protection scheme.

- 3.9. The Respondent was first notified that the Applicant was complaining about the late lodging of the deposit on 2 May 2019 when it was served with the Application paperwork by the tribunal's administration.
- 3.10. The Respondent admitted the breach on 8 May 2019 and provided an apology and explanation for the breach.
- 3.11. The late lodging was the result of the closure of the Respondent's office in Leeds and administrative oversight as a result. When the late lodging was identified the deposit was lodged by the Respondent as quickly as possible.
- 3.12. In the period before the deposit was lodged, it was in the Respondent's client account allocated to the Applicants and the Property.

4. Discussion

- 4.1. The tribunal took account of the Applicants' written and oral submissions; and the Respondents' written submissions.
- 4.2. In particular the tribunal had regard to the fact that the deposit was unprotected for the period of 55 working days, when it should have been lodged within 30 working days of the start of the tenancy and considered the period of 25 working days to be at the very low end of the spectrum in terms of the period for which a deposit was unprotected. The tribunal took account of the fact that the reason for the late lodging was administrative oversight due to an office closure and that once identified, the deposit was lodged as quickly as possible with the Certificate and prescribed information being issued to the Applicants. The tribunal also took account of the fact that the Applicants made no complaint at the time of receipt of the deposit certificate or at any time thereafter until the Application was made to the tribunal on 18 March 2019 one and a half months after the end of the tenancy. The Application appears to have been motivated in part by the Applicants' perception that the Respondent was unprofessional about a range of matters during the tenancy, including repairs issues and changes of personnel, as well as the late lodging of the deposit. The tribunal took account of the fact that the Applicants received their whole deposit back after the end of the tenancy, via the deposit protection scheme. The tribunal took account of the fact that the Respondent had replied within 6 days of receipt of the Application paperwork, which was the first notice of any complaint about late lodging of the deposit, admitted the breach and offered an apology and an explanation. The tribunal also took account of the fact that the deposit was in the Respondent's client account in the period prior to lodging.
- 4.3. For the reasons outlined, the tribunal decided to make an order for payment by the Respondent to the Applicants of the sum of £150.00.
- 4.4. The tribunal chair informed the Second Applicant that the Payment order could be enforced by the Applicants against the Respondent after the expiry of the

permission to appeal period. The tribunal Chair also advised the Second Applicant about the review and recall procedures.

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.

S Tanner

3 May 2019

Susanne L M Tanner Q.C.
Legal Member/Chair