

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 3 &10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/22/2103

Re: Property at 21/1 Wester Drylaw Place, Edinburgh, EH4 2TN (“the Property”)

Parties:

Miss Justyna Slabon, 18/7 Colonsay View, Edinburgh, EH5 1FJ (“the Applicant”)

Joan Rosselle, 140 Main Street, Neilston, Glasgow, G78 3JX (“the Respondent”)

Tribunal Member:

Susan Christie (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order be granted against the Respondent for payment of One Thousand One Hundred and Fifty Pounds (£1,150) to the Applicant.

Background

1. The Applicant applied for an Order for an award following on from a failure to lodge a deposit in an approved scheme timeously in line with regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011. The application was accepted by the tribunal on 6 July 2022.
2. Sheriff Officer’s served the paperwork on the Respondent on 26 July 2022 by leaving a copy in the hands of a relative of the Respondent.
3. The Respondent was invited to give written representations by 13 August 2022. They were submitted on 20 August 2022 following on from the Respondent contacting the tribunal office stating that she had returned from holiday on 13th August 2022.
4. Both Parties participated in the Case Management Discussion (CMD) on 14 September 2022 at 11.30am by conference call.
5. The tribunal proceeded with the CMD and explained the purpose of it to the Parties, referred to the wording of regulations 3,9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 and sought to clarify the undisputed facts on which the application proceeds. There was agreement on

material facts which allowed the application to be determined today and formed findings in fact.

6. The additional written submissions of the Parties which formed part of the paperwork were also considered and the Parties gave additional comment for the tribunal's consideration when exercising its discretion. The additional information provided is noted in the Reasons for Decision, subject to sensitive personal information not being included for the reason of publication of the Decision on the tribunal website and it being agreed with the Parties that this approach be taken.

Findings in Fact

- I. The Parties entered into a Short Assured Tenancy agreement over the Property on or around 15 October 2015; with a date of entry of 15 October 2015; rent of £575 payable in advance and a deposit being taken of £575.
- II. The first rent payment and the deposit were paid in one payment by the Applicant to the Respondent by payment transfer on 12 October 2015.
- III. The Parties entered into a Private Residential Tenancy Agreement over the Property around 1 and 5 May 2021; with a start date of 1 May 2021; rent payable of £600 per calendar month in advance; with a deposit being referred to in clause 11 of said agreement of £576 to be paid into the nominated tenancy deposit scheme 'Safe Deposits Scotland'.
- IV. The Applicant remained in uninterrupted occupation of the Property as a tenant from 15 October 2015 until 18 May 2022 when the tenancy ended by mutual agreement.
- V. The Applicant's tenancy deposit paid on 12 October 2015 was not paid into an approved tenancy deposit scheme.
- VI. The tenancy deposit was unprotected throughout the period of the Applicant's occupation of the Property.
- VII. The tenancy deposit was applied to the last month's rent due when the tenancy ended by mutual agreement.
- VIII. The Respondent did not comply with Regulation 3 as she did not pay the tenancy deposit into an approved scheme within 30 days of the beginning of the tenancy and did not provide the Applicant with the required information under regulation 42 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 and is in breach of regulation 3.
- IX. The Respondent is required to pay the Applicant a sum of money and the Tribunal must make an Order to that effect by virtue of regulation 10.
- X. An order is made for the Respondent to pay to the Applicant the sum of £1,150.

Reasons for Decision

7. The extract from the Tenancy Deposit Schemes (Scotland) Regulations 2011 ('the Regulations') relied upon are noted below. The Regulations came into force on 7 March 2011.
8. The Application was accompanied by documents verifying that the tenancy deposit paid over to the Respondent on 12 October 2015 was never paid into any of the approved tenancy deposit schemes. The Applicant provided copies

of the initiating Short Assured tenancy agreement and the subsequent Private Residential Tenancy Agreement. The initial tenancy agreement stated that the deposit taken would be paid into an approved scheme and the Regulations were quoted.

9. It is undisputed that the Private Residential Tenancy Agreement was entered into to reflect an increase in the rent and a new tenancy agreement to reflect the new rent was asked for by the Applicant. The initial deposit was not returned to the Applicant and effectively the Applicant retained uninterrupted occupation of the Property from the original date of entry.
10. The Applicant explained that she was unfamiliar with the way tenancy deposits were to be placed into a scheme and at that time she was unaware that she should have been provided with information in line with regulations 3 & 42 of the Regulations. It was only when she entered into a new tenancy after the tenancy over the Property had ended that she was given information about her new deposit, and she realised she should have been given the information.
11. The Respondent in her detailed written response outlined notable adverse circumstances in her personal and family life that had detracted from her attention to the management of the tenancy deposit around October 2015 and indeed that year. She lived abroad at that time and returned to Scotland in August 2020. Whilst she had a letting agent to source a suitable tenant and collect the first months' rent and deposit, she did not use a letting agent for anything else. She did not use a letting agent for the day to day business for this or any of the other 8 let properties she owns and conducts all the business in relation to deposits and the taking of rent herself. She does her own account 'books'. She only realised that this deposit had not been placed with Safe Deposits Scotland when the Applicant asked about it when giving notice. The Applicant discovered that it was not in an approved scheme suggested that it be deducted from what was due for the last months rent and the Respondent agreed. That was what was done. The deposit had remained in her business account from the outset. The Applicant received the deposit back as the last month's rent. She expressed remorse that she had got it wrong on this occasion. She had checked her other deposits since then for compliance.
12. Both Parties had made written submissions with their view on whether the Respondent as the landlord had complied with her duties as a landlord in relation to repairs and cleaning matters from the outset of the tenancy. It was the Applicant's position that the Respondent had been in touch in 2015 with her about matters that benefitted the Respondent such as having the Applicant apply for a free boiler but had not attended to other matters referred to as needing attention. The Respondent disputed this and cited examples that she considered showed she had been a responsible landlord for repair matters and had carried out repairs as quickly as possible. Whilst the Parties held different views on this area, it was noted by the tribunal that the focus of this application was whether the Regulations were complied with, and it was not a different type of application, for example for repairs issues or access, that could come before a tribunal. The Parties did not disagree with this approach.

13. The purpose of Regulation 10 is to impose a *sanction* on the landlord for the failure and non-compliance with the statutory scheme. The deposit was exposed to risk between it being paid on 12 October 2015 and around the end of the tenancy on 18 May 2022. The deposit funds were fully under the control of the Respondent during that time and therefore exposed to risk. The tribunal noted that the Respondent is a landlord of several properties and conducts all of the business herself including the obligation to lodge a deposit in an approved scheme. The Respondent therefore is familiar with the Regulations and the need to timeously lodge the deposit in an approved scheme. The failure to do so in this case is solely due to her omission. That being said, the tribunal accepted that she faced other challenges in her life during 2015 which could have detracted from her attending to business matters and took this into account. The tribunal accepted that the Respondent was remorseful for her omission in this case.
14. The period within which the omission remained undiscovered by the Respondent is significant. Despite the Private Residential Tenancy also referring to the tenancy deposit Regulations the omission was only picked up when notice was given. The tribunal makes an order for the Respondent to pay to the Applicant £1,150 which is double the deposit paid. The tribunal considered that this is an appropriate amount, exercising its discretion. It is less than the maximum sum that could be awarded and an allowance is made for the personal circumstances of the Respondent during 2015, the fact that the deposit was deducted from the last rent due and the remorse of the Respondent for her omission.

15. Extract from the Regulations

3.—

(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—

- (a) pay the deposit to the scheme administrator of an approved scheme; and*
- (b) provide the tenant with the information required under regulation 42.*

[

(1A) Paragraph (1) does not apply—

- (a) where the tenancy comes to an end by virtue of section 48 or 50 of the Private Housing (Tenancies) (Scotland) Act 2016, and*
- (b) the full amount of the tenancy deposit received by the landlord is returned to the tenant by the landlord,*
within 30 working days of the beginning of the tenancy.

J1

(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.

[

(2A) Where the landlord and the tenant agree that the tenancy deposit is to be paid in instalments, paragraphs (1) and (2) apply as if—

- (a) the references to deposit were to each instalment of the deposit, and*
- (b) the reference to the beginning of the tenancy were to the date when any instalment of the deposit is received by the landlord.*

J2

- (3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—
- (a) in respect of which the landlord is a relevant person; and
 - (b) by virtue of which a house is occupied by an unconnected person, unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.
- (4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.

9.—

- (1) A tenant who has paid a tenancy deposit may apply to the [First-tier Tribunal]¹ for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.
- (2) An application under paragraph (1) must be made [...]2 no later than 3 months after the tenancy has ended.

10.-

If satisfied that the landlord did not comply with any duty in regulation 3 the [First-tier Tribunal]¹ —

- (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and
- (b) may, as the [First-tier Tribunal]¹ considers appropriate in the circumstances of the application, order the landlord to—
 - (i) pay the tenancy deposit to an approved scheme; or
 - (ii) provide the tenant with the information required under regulation 42.

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.

Susan Christie

Legal Member/Chair

14 September 2022
Date