



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

Chamber Ref: FTS/HPC/PR/20/0999

**Re: Property at Top Floor, 440 George Street, Aberdeen, AB25 3XE (“the
Property”)**

Parties:

**Satya O'Rafferty, Bargy Commons, Murntown, County Wexford, Y35 V2Y4,
Ireland (“the Applicant”)**

Devarran II Ltd, 57 Wellington Street, Aberdeen, AB11 5BX (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Angus Lamont (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order in the amount of 1.25 times the deposit,
being the sum of £375, should be made.**

Background

An application was lodged on 26th March 2020 by the Applicant under Rule 103 of the The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), alleging that the Respondents had not lodged the Applicant’s deposit in an appropriate scheme, and that they had not given him the prescribed information.

The Applicant lodged a copy of the Tenancy Agreement and WhatsApp messages to show the date of termination of the tenancy.

On 18th August 2020 the Respondents sent an email to the Tribunal attaching a copy of the screenshot of their account with MyDepositScotland, to show that the deposit had been lodged.

A Case Management Discussion (“CMD”) took place by teleconference on 20th August 2020.

The Applicant was represented by Lucy Matheson of the Aberdeen Law Project. The Respondents were represented by Mr Dureja.

Mr Dureja said that the deposit had been lodged in a Scheme. However, at the end of the tenancy the deposit had been returned to the Respondents. His position was that the Applicant had signed an additional agreement regarding the length of the tenancy, and therefore had not given sufficient notice to the Respondents. The deposit had been repaid to them in lieu of rent.

The Applicant’s position was that he had not been given any correspondence about the deposit.

The Chairperson felt that further information was required. He adjourned to a further CMD, and issued a Direction to the Respondents.

The issues were noted as :

- a) What is the correct notice period in light of the terms of the Tenancy Agreement and the agreement dated 10th September 2019, and was the Respondent entitled to set off the deposit against any future rent;
- b) Was the deposit paid to an approved scheme, and if so, when;
- c) Was the applicant provided with information about the deposit in accordance with regulation 42?
- d) Was the Applicant advised of the Respondents’ retention of the deposit?

A Direction was issued instructing the following information to be provided to the Tribunal by 4th September 2020:

- a) all correspondence between the Respondents and the Applicant relating to the deposit, including the provision of the necessary information in terms of Regulation 42 of the Tenancy Deposit (Scotland) Regulations 2011;
- b) Evidence of deposit of the sum of £300 in an approved deposit scheme;
- c) Authority for the proposition that the period of notice required under the Tenancy Agreement was as set out in the Agreement of 10th September 2019;
- d) Authority to entitle the Respondents to set off the deposit against the future rent under the Tenancy Agreement.

Case Management Discussion

A CMD took place by teleconference on 5th October 2020. Prior to its commencement the Chairperson ascertained from the Clerk that no response had been received from the Respondents in relation to the Direction.

The Applicant was represented by Lucy Matheson of The Aberdeen Law Project. The Respondents were represented by Mr Dureja.

The Chairperson confirmed the Applicant's position with Miss Matheson. She said that it was now accepted that the deposit had been paid in to an approved scheme. However, the Applicant had never been given the information required in terms of Rule 42 of the TDS. She also confirmed that the Applicant had not received repayment of the deposit.

The Chairperson asked Mr Dureja to address the Tribunal on why there had been nothing lodged by the Respondents in response to the Direction. Mr Dureja apologised and said that his business partner dealt with the administration and had been absent from business due to Covid. The Chairperson asked for confirmation of the date when his business partner had been absent. Mr Dureja checked and confirmed he had been absent from 9th September, but was due back this week. The Chairperson pointed out that the documents were due to be lodged by 4th September 2020.

As there were matters in dispute the Chairperson took the view that the case would require to proceed to a Hearing.

The Chairperson identified the following issues to be resolved, and these were agreed by the parties:

- a) Was the Applicant provided with the information required in terms of Rule 42 of TDS;
- b) Was the Applicant given the opportunity to take part in the dispute resolution process with MyDepositScotland;

Miss Matheson confirmed that her only witness would be the Applicant, and that she was not intending at this moment in time to lodge any further documents.

Mr Dureja confirmed that his witness would be his business partner, Jai Meek Bhalami. He did not think he had any further documents to lodge.

The Chairperson said that she would issue a Direction for the Respondent to lodge all correspondence with MyDepositScotland in connection with the dispute resolution procedure and how it was conducted, including contact made by the deposit scheme with the Applicant.

A Direction was issued requiring the Respondents to lodge "All correspondence with MyDepositScotland in connection with the dispute resolution procedure, and return of the deposit, including all correspondence to show the Applicant was notified of the process". The documents were to be lodged by 20th October 2020.

On 8th October 2020 the Respondents lodged:

1. Copy of the Deposit Lodgement Certificate
2. Copy of the Dispute Resolution Process

3. Email from David Gibb at MyDepositScotland attaching Deposit Certificate

The Hearing

The Hearing took place on 12th November 2020 by teleconference. The Applicant was present on the call, as was his Representative, Lucy Matheson of the Aberdeen Law Project. For the Respondents were Mr Dureja and Mr Bhalami, both Directors.

The Chairperson introduced herself and the Housing Member, Mr Lamont. She explained how the Hearing would be conducted and that it should not be recorded. She summarised the position as follows and confirmed with both Miss Matheson and Mr Dureja that they agreed:

1. The Applicant rented the property for the Respondents;
2. They entered in to a Private Residential Tenancy dated 10/9/19 and 26/9/19;
3. The tenancy commences on 10/9/19;
4. The Applicant paid the Respondents a deposit in the amount of £300;
5. The Applicant gave the Respondents one month's notice and left the property on 11/1/20;
6. The deposit was placed in an approved tenancy deposit scheme with MyDepositScotland;
7. The deposit was returned by the scheme to the Respondents;
8. The parties entered in to a separate written agreement to make the tenancy for a fixed term.

The Chairperson explained to the Respondents that the separate written agreement could not be enforced as it was not possible to contract out of the provision of the legislation in relation to private residential tenancies.

The Chairperson referred to the Direction that she had issued following the CMD, and asked Mr Dureja why he had not complied fully with it. He said that MyDepositScotland will not provide copies of correspondence with the other party due to data protection legislation. He explained that the dispute resolution process is all conducted through an online portal.

The Chairperson asked Miss Matheson to present her case by taking evidence from the Applicant. The Chairperson reminded the Applicant that although the Tribunal did not place witnesses on oath he should tell the truth.

The Applicant told the Tribunal that he had emailed Mr Dureja on 22 January 2020 asking about the deposit and asking for a copy of the document he signed. He did not recall receiving a reply. He texted Mr Dureja on 2nd March 2020 asking about the deposit. He said that he had never received anything direct from MyDepositScotland. He did not receive an initial email or any subsequent emails. He did not know what had happened to his deposit, which is why he texted and emailed about it. He did not know it had been placed in a scheme until the first CMD. He was sure he had never received a copy of the deposit certificate.

Mr Lamont asked the Applicant if he had received anything at the end of the tenancy, for example a final rent statement. The Applicant said that he could recall having a discussion with the landlord about moving out, and he recalled being told that due to the separate agreement regarding the length of the tenancy he would not be getting the deposit back. He recalled that the landlord had said something along the lines of he wouldn't get it back unless he made a bit of a fuss. He did not believe that he had received anything in writing at the end of the tenancy.

Miss Matheson had no further questions for the Applicant, and Mr Dureja did not wish to ask him any either.

Mr Bhalami gave evidence. He was also reminded that although he was not on oath he should tell the truth.

Mr Bhalami said that his job was to prepare leases for signature by tenants and send them out for signature. He said that the normal practice of the company was that notification of the deposit scheme was provided to every tenant. The deposit was submitted to the scheme within 30 days. He would inform the tenant that the deposit had been lodged and provide them with the deposit certificate. This was done personally, not by post or email. The Chairperson asked if this procedure had been followed in the current case. He said that it had, and that he handed the deposit certificate to the Applicant himself. He could not recall the date on which that had happened.

Mr Bhalami said that he was the one who dealt with the dispute process. He said that the deposit scheme would ask on what grounds they were seeking return of the deposit. The deposit scheme then deal with any dispute. He said that MyDepositScotland will not provide copies of correspondence with the tenant due to date protection legislation. He confirmed that the deposit was returned on 27th April 2020.

Mr Dureja interjected with a comment that the separate written agreement about the length of the tenancy had been entered in to because he had seen on the Scottish Government's website that it was possible to do so provided that it was signed after the PRT.

Mr Lamont asked Mr Bhalami about the dispute resolution process. He asked why they could not provide any evidence of correspondence from their side in relation to it. Mr Bhalami explained that it was all done through a portal and with automated messages.

Mr Lamont asked if the Respondents had received the email of 22nd January 2020 and the text of 2nd March 2020 from the Applicant. Mr Dureja said that he had got the text of 2nd March 2020 and had phoned the Applicant straight away to explain. He could not remember what was said during the call but could recall there was a discussion about the deposit.

The Chairperson asked the Applicant if he had met with either of the Respondents and had had the deposit certificate handed to him. He said that he was quite certain that that had never happened.

Mr Lamont asked the Respondents if the last instalment of rent was paid and if they had carried out an inspection. Mr Dureja said yes to both questions.

The Chairperson asked if anyone had any final comments or points to make. The Applicant said that he had recently rented another property. He had received an email very quickly from the tenancy deposit scheme, had been kept informed and had received his deposit back at the end of the tenancy. He said it had been a much smoother and cleaner process.

The Tribunal adjourned to make their decision.

Findings In Fact

1. The Applicant rented the property from the Respondents;
2. They entered in to a Private Residential Tenancy dated 10/9/19 and 26/9/19;
3. The tenancy commences on 10/9/19;
4. The Applicant paid the Respondents a deposit in the amount of £300;
5. The Applicant gave the Respondents one month's notice and left the property on 11/1/20;
6. The deposit was placed in an approved tenancy deposit scheme with MyDepositScotland;
7. The deposit was returned by the scheme to the Respondents;
8. The parties entered in to a separate written agreement to make the tenancy for a fixed term;
9. The separate written agreement has no legal standing as it is not possible to contract out of the terms of the Private Housing (Tenancies)(Scotland) Act 2016;
10. The Respondents did not provide the Applicant with a Deposit Certificate;
11. The Respondents had no entitlement to request that the deposit be returned to them.

Reasons For Decision

The issues to be decided were fairly narrow.

The first issue was whether or not the Respondents had complied with the terms of regulation 42 of the Tenancy Deposit (Scotland) Regulations 2011.

Regulation 42 is as follows:

42.—(1) The landlord must provide the tenant with the information in paragraph (2) within the timescales specified in paragraph (3).

(2) The information is—

(a) confirmation of the amount of the tenancy deposit paid by the tenant and the date on which it was received by the landlord;

(b) the date on which the tenancy deposit was paid to the scheme administrator;

(c) the address of the property to which the tenancy deposit relates;

(d) a statement that the landlord is, or has applied to be, entered on the register maintained by the local authority under section 82 (registers) of the 2004 Act;

(e) the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid; and

(f) the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement.

(3) The information in paragraph (2) must be provided—

(a) where the tenancy deposit is paid in compliance with regulation 3(1), within the timescale set out in that regulation; or

(b) in any other case, within 30 working days of payment of the deposit to the tenancy deposit scheme.

The Applicant said he did not receive the information. The Respondents said they provided it. In the absence of any independent evidence, for example a letter or email, the Tribunal preferred the evidence of the Applicant.

The second issue related to the return of the deposit through the tenancy deposit scheme. The Applicant said that he has heard nothing from them. He enquired about the deposit by email of 22nd January 2020 and by text of 2nd March 2020. The Respondents remembered having a telephone call with the Applicant on 2nd March 2020 about the deposit. Given that the Respondents' evidence was that the deposit was returned to them on 27th April 2020 the dispute resolution process would have been ongoing at that time. The Respondents would have had ample opportunity in that call to confirm the process was ongoing. No written evidence was provided to confirm what the deposit scheme had been told about why the deposit should not be returned to the Applicant. In this matter the tribunal preferred the evidence of the Applicant.

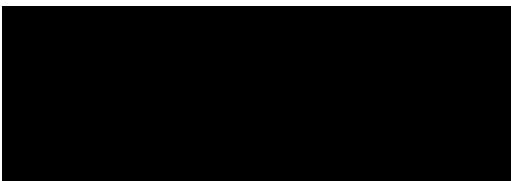
The Tribunal was then required to consider what amount the Respondents should pay to the Applicant in relation to the breach. The Tribunal considered the written submission made by Miss Matheson on behalf of the Applicant. The Tribunal has discretion on a case by case basis about what sum to award. Previously decided cases can be persuasive; they are not binding.

The Tribunal took the view that as the deposit had been lodged in a scheme, and therefore protected, the breach of Regulation 42 was at the lower end of the scale. However, the deposit had not been returned to the Applicant and, given that the separate written agreement was not enforceable, he was entitled to its return.

The Tribunal, having considered all the circumstances, decided to award 1.25 times the amount of the deposit.

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: Alison Kelly

Date: 12 November 2020