



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under The Tenancy Deposit Schemes (Scotland) Regulations 2011 as amended by The Tenancy Deposit Schemes (Scotland) Amendment Regulations 2019. (“the Regulations”).

Chamber Ref: FTS/HPC/PR/20/1024

Re: Property at 12/8, Giles Street, Edinburgh, EH6 6DA (“the Property”)

Parties:

Mr Guido Scotti, 2/1 Rosevale Terrace, Edinburgh, EH6 8AQ (“the Applicant”)

Mr Grzegorz Ciesielski, address unknown (“the Respondent”)

Tribunal Member:

Martin McAllister (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent pay the sum of Eight Hundred Pounds (£800) to the Applicant.

Background

On 7th April 2020 the Applicant submitted an application to the Tribunal seeking payment of a sum in compensation under regulation 10(a) of the Regulations.

The whereabouts of the Respondent was unknown to the Applicant despite him having made enquiry and service of the date of the case management discussion was made by advertisement.

Neither party made written representations.

A case management discussion was held on 3rd November 2020. It was held by audio conferencing because of the current public health emergency.

Mr Guido Scotti, the Applicant was present. There was no appearance from the Respondent. The Legal Member set out the purpose of a case management discussion.

Mr Scotti indicated that he hoped that the application could be determined without a Hearing.

The Tribunal had regard to the following documents:

1. Application dated 7th April 2020;
2. Emails from the Applicant to the Respondent;
3. Copies of HSBC bank statements relating to account of the Applicant;
4. Emails from three approved deposit schemes confirming that the deposit had not been lodged in an approved tenancy deposit scheme.

The Law

The Tenancy Deposit Schemes (Scotland) Regulations 2011

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.

(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.

(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.

9. (1) A tenant who has paid a tenancy deposit may apply to the sheriff 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 by summary application and must be made 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 sheriff—

(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 sheriff 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.

After hearing the Applicant and consideration of the documents before it, the Tribunal decided that the application could be determined without a Hearing

Findings in Fact

- 1. The Applicant and the Respondent were parties to a tenancy for the Property.**
- 2. There was no written tenancy agreement.**
- 3. The tenancy commenced on 15th January 2020 and came to an end on 6th March 2020.**
- 4. The Applicant paid a tenancy deposit of £300 to the Respondent.**
- 5. The Respondent did not lodge the deposit with an approved tenancy scheme.**
- 6. The Respondent has returned the deposit to the Applicant.**

Reasons

- 1) Mr Guido said that he saw the Property advertised on Gumtree and that he agreed with the Landlord, Mr Grzegorz Ciesielski to rent it for £500 per month and it was agreed that a deposit of £300 be paid. He said that there were two other tenants in the Property who had separate tenancy arrangements with the Respondent. He said that it was his understanding that these individuals did not have rental contracts from the Respondent.**
- 2) Mr Guido said that he paid the sum of £100 to the Respondent on 9th January and that this was part payment of the deposit to reserve the Property. He said that he told the Respondent that he would pay the balance on the date of entry on the basis that he would get “a rental contract.” He said that the Respondent promised that he would get this.**
- 3) Mr Guido said that on 15th January 2020, the date of entry, he made a payment of £329 to the Respondent and said that he had told Mr Ciesielski that he would pay the balance of the rent and deposit when he got a contract. He was persuaded to pay the balance by the Respondent who promised him that he would get a contract. Mr Guido said that, on**

this basis, he paid the balance. He directed the tribunal to the copy HSBC bank statements which he had lodged where the payment of £100 was shown on 9th January 2020 with the entry “Greg Ciesi Deposit 12 Giles st.” Mr Guido directed the tribunal to the bank statement where entries for 15th January 2020 were shown: “Greg Ciesi Dep&rent12gilesst £329” and “Greg CiesiRent Jan12/8GilesSt £371.”

- 4) Mr Guido said that he never got a contract and raised the matter with Edinburgh City Council. Enforcement officers of the Council called at the Property and took action because there was no HMO licence.
- 5) Mr Guido said that he arranged with the Respondent that he would leave the Property on 6th March 2020.
- 6) Mr Guido said that the Respondent did not live in the Property and that he had represented to him that he was the owner. He said that he subsequently discovered that the Respondent had, in fact, rented the Property from Pink Property Services, a letting agent and was a tenant who had sublet it. He said that he understood from the enforcement officers that the Respondent was doing this with other properties.
- 7) Mr Guido said that, following his departure from the Property, he received return of £300 in respect of the deposit but that he was still owed £160 in respect of a refund of rent.
- 8) Mr Guido directed the tribunal to the copy emails which he had sent to the Respondent about return of his deposit and rent. These referred to a rental deposit.
- 9) Mr Guido said that he made enquiry of the three approved tenancy deposit schemes and he referred to the replies which he had received and which confirmed that the deposit had not been placed any of them.

Determination

The tribunal found the applicant entirely credible. There was no tenancy agreement but Mr Guido's evidence together with the entries on the bank statements and the content of the emails supported that there had been a tenancy albeit somewhat irregular. The Respondent had represented that he was entitled to grant a tenancy when he was not. He had also failed to provide a tenancy agreement and had not placed the rental deposit in a protected deposit scheme.

The Sanction

The creation of regulations to cover tenancy deposits was to protect tenants' funds and provide a structured process of dispute resolution. The reasons for such a scheme were demonstrated by this application. The Respondent received £300 as a deposit but did not lodge it with an approved deposit scheme.

The Applicant were left without protection of his funds for the whole of the tenancy.

The Regulations are clear in stating that, where there is a breach such as this, the Tribunal must make an order requiring a Landlord to pay a Tenant a sum not exceeding three times the amount of the tenancy deposit. The amount is a matter of judicial discretion and must reflect what is a fair, proportionate and just sanction, having regard to the purpose of the Regulations and the gravity of the breach. It is a balancing exercise.

In this particular case, the Tribunal had regard to the fact that the deposit was unprotected for the whole period of the tenancy which amounted to fifty days.

The Tribunal had regard to and adopted the approach of the Court in *Russell-Smith and Others v Uchegbu* (2016) SC EDIN 64 where the Sheriff had effectively stated there to be two broad aspects to the sanction. The first was the period of time the deposit was unprotected and the second is a sum to reflect a weighting taking into account the particular circumstances of the case including the landlord's experience etc.

The deposit was unprotected for the whole period of the tenancy and for a period beyond its end. It is considered that the appropriate starting point for the sanction should therefore be £200 and, in coming to this figure, the tribunal had regard to the relatively short period of the tenancy.

The Respondent had not provided a tenancy agreement and had rented out a Property which he did not own and which was an unlicensed HMO. The Tribunal considered that the financial penalty to reflect this second aspect is fairly set at £600.

The Tribunal determined to make an Order requiring the Respondent to pay the sum of £800 to the Applicant.

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.

Martin McAllister

Martin J. McAllister, Legal Member
3rd November 2020

