



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Chamber Ref: FTS/HPC/PR/20/1228

Re: Property at 99 Greenloanings, Kirkcaldy, KY2 6NL (“the Property”)

Parties:

Miss Sharon Robertson, 30 Blackcraigs, Kirkcaldy, KY2 6TJ (“the Applicant”)

Mr Alan Burton, 102 Spelthorne Lane, Ashford, Middlesex, TW15 1UH (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the Respondent in the sum of £1000.00

Background

1. By application dated 21 May 2020 the Applicant applied to the Tribunal for an order in terms of Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber Procedure Regulations 2017 (“the 2017 Rules”) in respect of an alleged breach by the Respondent of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”).
2. By notice of Acceptance dated 11 June 2020 the Chamber President accepted the application and a Case Management discussion was assigned.
3. Intimation of the Case Management Discussion was sent to the Applicant by post and was served on the Respondent by Process servers. The initial Case Management discussion was postponed and a further Case Management discussion assigned to take place on 9 September 2020.
4. The Respondent submitted written representations by email on 13 August 2020.

5. A Case Management Discussion was held by tele-conference on 9 September 2020 and was adjourned to a further Case Management discussion to allow the Applicant to lodge a copy of the tenancy agreement , a letter of authority from the Applicant's co-tenant Mr William Wilson, an exchange of text messages /emails between the parties relating to the deposit and where it was being held and evidence to support the date the tenancy ended.
6. By email dated 16 September 2020 the Applicant submitted copies of texts between herself and the Respondent, a letter of authority from Mr William Wilson and a summary of core terms in respect of the tenancy agreement.
7. A further Case Management discussion was held by tele-conference on 29 October 2020. The Respondent did not attend. As the Respondent had not agreed the terms of the lease and as the tenancy agreement in its full terms was not available the legal member continued the application to a full hearing.
8. By email dated 29 October 2020 the Applicant submitted a copy of the tenancy agreement.
9. A hearing assigned for 20 November was postponed due to an administrative error and a new hearing assigned to take place by tele-conference on 8 December 2020.

The Hearing

10. A Hearing was held by teleconference on 8 December 2020. Both parties were in attendance. The Respondent explained that he had been unaware of the Case Management discussion held on 29 October 2020 hence his non-attendance. He said he had received a number of emails advising of various dates and hearings being cancelled.
11. The Tribunal confirmed with the Respondent that he had received a copy of the tenancy agreement and the letter of authority from Mr Wilson and the text messages submitted by the Applicant.
12. The Tribunal confirmed with both parties that it was agreed that the tenancy commenced on 30 May 2017. The Tribunal also sought to ascertain if it was agreed when the tenancy ended. The applicant submitted it had ended on the day she moved into her new property and had returned the keys personally to the Respondent namely 4 May 2020. The Respondent submitted that he had taken photographs of the property on his phone on the day the tenancy ended and that it had been 5 May 2020.
13. The Applicant said that she had paid the deposit of £750.00 to the Respondent's letting Agents, Your Move on 29 May 2017. She said she thought it would have been paid by card. For his part the Respondent said he had no idea how or when the deposit had been paid. He explained that Your Move had told him that they would have sent him the deposit funds. He said they had been very unsupportive and had provided him with no information about the Tenancy Deposit scheme requirements.

14. The Applicant explained that she had become concerned when she had spoken to the Respondent's wife on the telephone in about March 2020 and had been told that she was not sure where the deposit was. She said at that point alarm bells began to ring. She said that she then contacted Your Move who told her the Respondent had been in touch with them about the deposit.
15. The Respondent confirmed that shortly after he had contacted Your Move he had lodged the deposit with My Deposits Scotland. He thought that although the Deposit Protection Certificate stated that the tenancy commenced on 7 March 2020 that would have been the date he lodged the funds.
16. The Respondent advised the Tribunal that although he had received the tenancy agreement from Your Move around the commencement of the tenancy, he had not read it. He explained that due to a number of family bereavements he had been going through a bad time and was in therapy.
17. The Respondent confirmed he was now aware of the terms of the 2011 Regulations and that in terms of Regulation 3 the Applicant's deposit ought to have been lodged in an approved scheme within 30 working days of being paid.
18. The Respondent confirmed he only let out one property and that he had commenced letting it in about 2010. At that time, he had registered with Fife Council as a Landlord. He explained that he was not an experienced landlord and that a lot of the legal stuff he had received may have gone above his head. He did not recall receiving any information about the coming into force of the 2011 Regulations.
19. By way of mitigation the Respondent submitted that the Applicant had received her whole deposit back even although there had been issues with the property. He thought the Applicant had deliberately created issues regarding the condition of the property in order to be rehoused. He said he had been understanding over the rent when the Covid pandemic had struck and felt hard done by the legal system.
20. For her part the Applicant said that she understood that the application was not about the condition of the property but that she had been forced to contact the Environmental Health Department because of the problems with the property.
21. The Tribunal queried why the Respondent had agreed to the applicant receiving the whole deposit back when there was apparently issues with the condition of the property on its return. The Respondent explained that although it had cost him hundreds of pounds to put the property into good order he had been in therapy and did not need to be involved in that type of dispute with the Applicant.
22. The Tribunal also queried if the Respondent intended taking matters up with his former letting agents and the Respondent confirmed that he did.

Findings in Fact

23. The parties entered into a Short Assured Tenancy Agreement that commenced on 30 May 2017 at a rent of £500.00 per calendar month.
24. In terms of the agreement the Applicant paid a deposit of £750.00 to the Respondent's letting Agents, Your Move, at the commencement of the lease.
25. The deposit was not lodged in an approved Tenancy Deposit Scheme until about 7 March 2020 when the Respondent lodged £750.00 with My Deposits Scotland.
26. The tenancy ended on either 4 or 5 May 2020.
27. The Respondent owns one property which he rents out and is not a professional landlord.
28. The whole deposit was returned to the Applicant following the end of the tenancy.

Reasons for Decision

29. Although the Applicant was unable to provide documentary evidence to support her oral submission that she had paid the deposit at the commencement of the tenancy the Tribunal was satisfied that the evidence she gave was credible and reliable and the Respondent offered no evidence to dispute that the deposit had been paid as stated by the Applicant and indeed in his written submission the Respondent stated "the 750GBP was kept in a locked safe and was never touched".
30. Although there was a dispute between the parties as to whether the tenancy ended on 4 May or 5 May 2020 that is not particularly relevant as the application to the Tribunal was clearly made within the three months provided for in terms of Regulation 9 of the 2011 Regulations.
31. It was accepted by the parties that the deposit was not paid into an approved scheme until about 7 March 2020 some 2 years and 10 months after the commencement of the tenancy.
32. Regulation 10 of the 2011 Regulations provides as follows: "If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal - (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 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."
33. The Tribunal is satisfied that the Respondent did not comply with his duty under regulation 3, and accordingly it must order the Respondent to pay the Applicant an amount not exceeding three times the amount of the tenancy deposit.

34. In the case of *Jenson v Fappiano* 2015 G.W.D 4-89, Sheriff Welsh opined in relation to regulation 10 of the 2011 Regulations that there had to be a judicial assay of the nature of the non-compliance in the circumstances of the case and a value attached thereto which sounded in sanction, and that there should be a fair, proportionate and just sanction in the circumstances of the case. With that assessment the Tribunal respectfully agrees. In the case of *Tenzin v Russell* 2015 Hous. L. R. 11, an Extra Division of the Inner House of the Court of Session confirmed that the amount of any award in respect of regulation 10(a) of the 2011 Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case. In determining what a fair, proportionate and just sanction in the circumstances of this application should be, the Tribunal took account of the facts that the Respondent had no specialised knowledge of housing law or regulations, he is not what could reasonably be considered a professional landlord and may have had some personal difficulties that affected his ability to deal with certain aspects of his life. He also did not dispute the Applicant receiving her whole deposit being returned despite apparently having grounds for doing so. Although these factors do not excuse the Respondent's failure to comply with Regulation 3 the Tribunal does accept they do go some way in mitigation. However, to be balanced against this is the fact that for almost three years the Applicant's deposit remained unprotected and therefore whilst it would be inappropriate to make an award at the upper end of the scale it is necessary for the Tribunal to impose a sanction which reflects the serious nature of the Respondent's failure to adhere to the 2011 Regulations. In all the circumstances the Tribunal, in balancing all the competing factors, finds that £1000.00 (one and one third times the deposit) is an appropriate sanction to impose.

Decision

35. The Tribunal having carefully considered the documentary and oral evidence and submissions on behalf of both parties finds the Applicant entitled to payment by the Respondent in the sum of £1000.00.

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.

**Graham Harding
Legal Member/Chair**

**8 December 2020
Date**