



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 3,9 &10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”)

Chamber Ref: FTS/HPC/PR/20/1709

Re: Property at 0/1, 1222 Argyle Street, Glasgow, G3 8TJ (“the Property”)

Parties:

Mr Andrew Bowey, Top Floor Flat, 42 Athole Gardens, Glasgow, G12 9BQ (“the Applicant”)

Mr Waliur Rahman, 48 Errol Gardens, Glasgow, G5 0RR (“the Respondent”)

Tribunal Members:

Susan Christie (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order be granted for the Respondent to pay the sum of £2,600 to the Applicant.

Background

1. The Applicant made the application to the Tribunal on 13 August 2020. It is made under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”).
2. The associated application CV/20/1863 was made by the same Applicant and under Rule 111 of the Rules who sought payment for return of the original deposit of £1300.

Extract from Case Management Discussion (CMD) Note - 25 November 2020

3. “Both Parties participated in the conference call.
The following facts were agreed

- The Parties entered into a rental agreement over the Property around 25 July 2019.
- The start date for the tenancy was 1 August 2019.
- The rental agreement was not in a recognised model tenancy agreement, notwithstanding that the tenancy had commenced after the Private Housing (Tenancies) (Scotland) Act 2016 came into force. It is however a private residential tenancy within the meaning of the Act.
- A deposit was paid by the Applicant to the Respondent of £1300 around 26 April 2019 for the Property rental.
- The deposit was not paid into an approved tenancy deposit scheme.
- The tenancy ended by agreement around 1 June 2020, by which the Applicant had moved out all of his belongings and given notice to the Respondent. He had secured alternative accommodation.
- The Applicant then became aware of the existence of the tenancy deposit scheme.
- The Deposit has not as yet been returned to the Applicant in whole or in part although there was some communication between them about it.
- The deduction the Respondent is seeking to be deducted from the deposit was discussed in the separate application, for which a Note will also be produced.
- Having established that there has been a breach of regulation 3 of the regulations, I explained to the parties that I needed to decide on the level of the sanction to be awarded.
- The Respondent's position is that he was the owner of the Property for around 17 years then in 2013 the ownership was transferred to his wife. She still owns it. He had family staying in it until around 2018 when he rented it out as agent for his wife, who does not speak English. He is not registered for landlord registration purposes.
- He had approached a letting agent however they were asking for an agency fee which he thought was expensive. The Parties were introduced as he had put a listing for it on Gumtree.
- The Respondent stated in his response that "My understanding of the law is that only short hold assured tenancy agreements require a deposit to be paid into a deposit scheme. I did not know if the rental agreement is covered by this. I apologise if I should have done this and I have not. I was never asked by my tenant to provide any details of this...I contacted Mr Bowey by phone for us to discuss this matter...he did not come back to me with an offer..."

The Regulations and the obligations flowing from that were discussed in detail with the Parties today. Whilst there are some differences in their position the facts are sufficiently agreed to show that there had been a breach of regulation 3. I am therefore required to consider an appropriate level of the award as a sanction for non-compliance. As there is an associated application, I wished to ascertain the outcome of that prior to making a final decision in this application. I also indicated to the Parties that they can provide me with any additional comment on the next occasion and seek legal advice in the meantime should they wish to do so."

Case Management Discussion - 27 January 2021 at 10am by conference call.

4. Both Parties participated in the conference call.
5. Shortly after the last CMD, payment of the sum of £1,230 was made by the Respondent to the Applicant, which represented the repayment of the initial deposit less £70, as agreed. This meant the associated application could be withdrawn.
6. Both Parties were asked to confirm whether the agreed facts set out in the CMD Note of 25 November 2020 (and replicated above) were accurate. They both agreed they were.
7. That being the case and as there was sufficient facts agreed to allow me to determine the application today, they were both given the opportunity to provide any additional information or comments for me to consider.
8. The Applicant generally stated that his view was that the Respondent did not intend to return the deposit until the outcome of the last CMD. He had previously delayed payment referring to him needing information regarding the energy supply then ignoring all communications when that had been clarified. He believed this indicated that the Respondents intention was malicious. He was seeking an Order in this application.
9. The Respondent stated that he felt it was a misunderstanding and now that the deposit had been repaid, they were both happy. He had nothing further to add.
10. I adjourned for a short time for me to consider the paperwork and the agreed facts, then resumed and advised the Parties verbally of my decision.

Findings in Fact

- I. The Parties entered into a rental agreement over the Property with a start date of 1 August 2019.
- II. It is a private residential tenancy (PRT) within the meaning of the Private Housing (Tenancies) (Scotland) Act 2016.
- III. The Scottish Government Model Private Residential Tenancy Agreement (PRTA) was not used.
- IV. The Respondent is declared in the rental agreement as the landlord.
- V. The registered landlord with the relevant local authority for the area in which the Property is situated is not the Respondent.
- VI. The registered owner of the Property is not the Respondent.
- VII. A Deposit was taken of £1,300 and paid to the Respondent.
- VIII. The Deposit was not paid into an approved scheme.
- IX. The PRT ended around 1 June 2020.
- X. The original Deposit less £70 was repaid to the Applicant around the end of November 2020.

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.

42.— Landlord's duty to provide information to the tenant

(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.*
- (4) Where the landlord and the tenant agree that the tenancy deposit is to be paid in instalments—*
 - (a) paragraphs (2) and (3) apply as if the references to deposit were to each instalment of the deposit, and*
 - (b) in relation to the information provided under paragraph (2)(a), confirmation of the cumulative amount of the tenancy deposit paid by the tenant in respect of each instalment after the first instalment.*

Reasons for Decision

I was satisfied that I could decide today without a Hearing, as the facts were sufficiently agreed, and there was sufficient documentary evidence and written information already produced, to allow me to do so.

I did not consider this was contrary to the interests of the Parties as they had been given the opportunity to reflect and seek advice if they chose to after the first CMD; and they today agreed the facts set out in the CMD Note as accurate.

The Defender stated that whilst he was no longer the owner of the Property his wife is, and he entered into the rental agreement with the Applicant over the Property. He is neither the registered landlord, nor is he the registered owner of the Property. He stated generally that the Property had been let out since around 2018 out with the family. He had approached a letting agent about dealing with the rental, but it was in his view too expensive to engage them and therefore proceeded alone. He put a listing for the rental on Gumtree and that is how the Parties were introduced. His understanding of the rent deposit scheme regulations detailed in his written response was incorrect. When the tenancy ended, the Respondent withheld the deposit, and no agreement was reached to allow any sum to be repaid. The communication between the Parties raised other matters of dispute, some of which were irrelevant to the repayment of the deposit. The balance of the deposit was repaid to the Applicant (as agreed) after the discussions at a CMD in the conjoined case.

I had to consider what amount my order was to be fixed at under regulation 10. In so doing I reflected on the facts specific to this application. I had regard to the fact that the deposit was at risk for the entire term of the rental and beyond, until an

agreement was reached within the tribunal process. The Respondent appeared to have a poor understanding of the legal obligations that apply to a landlord in Scotland and this was worrying if his wife owns the Property, is the registered landlord and he is dealing with the rentals.

As I pointed out to the Parties the rent deposit Regulations would have afforded to both of them a mechanism to resolve any dispute in relation to what was due to be repaid from the deposit. Instead, an application was needed to this tribunal. I had regard to the terms of the Regulations and considered the approach taken in *Ross Cooper v Simon Marriot* [2016] Sc Edin 25; *Ross Fraser & Alison Pease v Andrew Meehan*, Edinburgh 29 August 2019, and *Russell-Smith 7 others v Uchegbu* [2016] Sc Edin 64. I also was mindful that each case is decided on the facts specific to it.

The sanction is intended to be a deterrent for those that do not comply with the tenancy deposit regulations. I consider the gravity of the breach of the regulations in this application to be at the higher end of the scale.

I noted that the deposit was eventually repaid.

I am satisfied, having regard to the circumstances of this case and the terms of the Regulations that an Order for the Respondent to pay £2,600 should be made. This is double the deposit. I consider this to be a proportionate and just sanction for the facts specific to this case.

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.

S Christie

Legal Member/Chair

27 January 2021
Date