



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

Chamber Ref: FTS/HPC/PR/20/1951

Re: Property at 34 Kincorth Crescent, Aberdeen, AB12 5AH (“the Property”)

Parties:

Miss Stephanie Dinnegan, 87 Chalkhill Road, Wembley, HA9 9UG (“the Applicant”)

Mr William Leiper, Julanville, Charleston, Nigg, Aberdeen, AB12 3LL (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

This is an application dated 14th September 2020 brought in terms of Rule 103 (Application for order for payment where landlord has not paid the deposit into an approved scheme) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended. The application is made under Regulation 9 of the *Tenancy Deposit Schemes (Scotland) Regulations 2011* (“the 2011 Regulations”).

The Applicant seeks payment of compensation in respect of an alleged failure by the Respondent to pay the deposit she asserts she provided of £380.00 in relation to the tenancy agreement into an approved scheme within 30 days of receipt of that sum.

The Applicant provided with her application copies of the short assured tenancy agreement and redacted bank statements showing payment of the deposit to the Respondent’s son on his behalf.

The Respondent has been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 6th October 2020, and the Tribunal was provided with the execution of service.

The Case Management Discussion

A Case Management Discussion was held on 5th November 2020 by Tele-Conference. The Applicant participated, and was not represented. The Respondent participated, and was not represented.

The Applicant explained that she had paid the deposit of £380.00 to the Respondent's son on his behalf on 12th September 2016, just before the commencement of the tenancy on 18th September 2016. She left the tenancy on 27th July 2020, and she had not been repaid the deposit.

The Applicant stated that she did not believe that the deposit had been paid into an approved scheme, and sought compensation at three times the amount of the deposit. She also asked the Tribunal to order that the deposit be lodged with an approved scheme so that she could reclaim it.

The Respondent, to his credit, was very candid in accepting that the Applicant paid the deposit of £380.00 in September 2016, and that he had not repaid it to her after the end of the tenancy. He confirmed that he was ready and willing to repay the full deposit to her, and had not done so simply through oversight on his part.

The Respondent explained that he was aware of the tenancy deposit scheme, but that he had been advised by a representative of Robert Gordon University, to whose students he had in the past rented property, that it was only if the deposit exceeded one month's rent that the deposit needed to be lodged with an approved scheme. As the deposit here was of one month's rent, he had understood that he did not need to lodge it with an approved scheme.

The Tribunal explained that its understanding of the legal provisions was that all deposits, of whatever amount, required to be lodged in an approved scheme, and asked the Respondent if he wished an opportunity to take legal advice on his position.

The Respondent declined that opportunity, stating that he accepted what the Tribunal said, wanted to have this matter dealt with today, and invited the Tribunal to award twice the value of the deposit as fair compensation in the circumstances.

The Respondent confirmed that he was happy to pay the deposit amount back to the Applicant directly. After some discussion, the Applicant and Respondent agreed that the Respondent would do this, and the Applicant withdrew her request for an order that the deposit be paid into an approved scheme on that basis.

Reasons for Decision

This application was brought timeously in terms of regulation 9(2) of the 2011 Regulations.

Regulation 3 of the 2011 Regulations (which came into force on 7th March 2011) provides as follows:

“(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.”

The Respondent as landlord was required to pay the deposit into an approved scheme. He accepted that he failed to do so.

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.”

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.

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, had misunderstood the need for the deposit to be placed with an approved scheme upon the basis that he had misunderstood the provisions and believed that only deposits exceeding one months' rent required to be so lodged, and accepted at the first opportunity before the Tribunal that he was at fault and had contravened Regulation 3 of the 2011 Regulations. He

also immediately accepted his obligation to repay the deposit to the Applicant and was keen to do so.

In these circumstances, the Tribunal considers that albeit misunderstanding of the terms of the 2011 Regulations is no excuse or defence, the foregoing factors do represent mitigation in respect of the sum to be awarded in the exercise of its judicial discretion.

However, balanced against these mitigating factors, are the fact that the Respondent received payment of the deposit on 12th September 2016 and did not comply with his legal obligations as a landlord with respect to the 2011 Regulations, which regulations have been enacted to provide protection to tenants in respect of their deposit and ensure that they can obtain repayment of their deposit at the conclusion of the lease, and the fact that the period during which the deposit was not lodged in an approved scheme and during which the Applicant did not have the security provided by such lodging was lengthy (approximately three years and ten months).

Balancing these various competing factors in an effort to determine a fair, proportionate and just sanction in the circumstances of this application, the Tribunal considers that the sum of £760.00 (twice the amount of the tenancy deposit) is an appropriate sanction to impose.

Decision

For the foregoing reasons, the Tribunal orders the Respondent in respect of his breach of Regulation 3 of the 2011 Regulations to make payment to the Applicant of the sum of £760.00 in terms of Regulation 10(a) of the 2011 Regulations.

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.

Neil Kinnear

Neil Kinnear

5 October 2020

Legal Member/Chair

Date