



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/20/2651

Re: Property at 31 Wamanbie Road, Brydekirk, Annan, DG12 5ND (“the Property”)

Parties:

Mr Joseph Sturgeon, 31 Warmanbie Road, Brydekirk, Annan, DG12 5ND (“the Applicant”)

Mr Ross Anderson, Millriggs Farm, Hutton, Boreland, Lockerbie, DG11 2PB (“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 17th December 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 he asserts he provided of £450.00 in relation to the tenancy agreement into an approved scheme within 30 days of receipt of that sum.

The Applicant provided with his application copies of a tenancy agreement, various mobile phone text messages between the Applicant and the Respondent's wife, bank statements, and e-mails from the approved schemes.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 4th February 2021, and the Tribunal confirmed execution of service.

The Case Management Discussion

A Case Management Discussion was held on 5th March 2021 by Tele-Conference. The Applicant participated, and was not represented. The Respondent did not initially participate, but his wife, Mrs Kirsty Anderson, participated and explained that she was representing her husband who is a keyworker and was not available.

In response to an enquiry from the Tribunal to confirm her authority from the Respondent to act on his behalf in this application, Mrs Anderson contacted the Respondent who briefly participated in the Tele-conference call to confirm that he was fully aware of these proceedings and wished his wife to represent him.

The Applicant explained that all of his dealings in relation to the tenancy had been with the Respondent's wife. The Applicant had paid the deposit of £450.00 to the Respondent's wife together with the first month's rent by two instalments both paid at the date of the commencement of the tenancy on 17th October 2019.

The Applicant stated that the deposit had not been paid into an approved scheme, and sought the maximum compensation available. He also stated that the Respondent had not registered as landlord on the register of landlords. Finally, he confirmed that the deposit had eventually been lodged in an approved scheme on 8th February 2021.

Mrs Anderson, to her credit, was very candid in accepting that the Applicant paid the deposit of £450.00 in October 2019, and that the Respondent had not paid the deposit into an approved scheme until February 2021.

Mrs Anderson explained that the Respondent was not a professional landlord. He had rented the Property, which was their former home, to the Applicant pending its intended subsequent sale.

The Respondent and Mrs Anderson were very inexperienced in letting property, and simply did not realise that they needed to lodge the deposit in an approved scheme, nor that the Respondent needed to register as landlord on the register of landlords.

The Respondent initially became aware that he was in breach of his legal obligation to register as a landlord in April 2020, and subsequently registered a short time after. He subsequently became aware that he was also in breach of his legal obligation to

lodge the tenancy deposit in an approved scheme in November 2020, and Mrs Anderson attempted to lodge the deposit at that time.

Mrs Anderson subsequently checked and found that the approved scheme had not registered the deposit as lodged, due to her not providing all the required details. She then provided those, and the deposit was then lodged and registered on 8th February 2021.

Mrs Anderson explained that she had erroneously (as she now accepted) initially believed that the Applicant had only paid half of the deposit amount. She realised her error and had rectified her mistake.

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, that he did not engage in the letting of property on a commercial basis, was ignorant of the need for the deposit to be placed with an approved scheme, had immediately upon realising that the deposit needed to be lodged in an approved scheme arranged to do so, and accepted at the first opportunity before the Tribunal that he was at fault and had contravened Regulation 3 of the 2011 Regulations.

In these circumstances, the Tribunal considers that albeit ignorance of the terms of the 2011 Regulations is no excuse or defence to not complying with them, 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 in October 2019 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, 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 sixteen months), and the fact that the Respondent also did not initially comply with his legal obligation to register as landlord on the register of landlords.

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 £675.00 (one and a half times 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 £675.00 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

05/03/2021

Legal Member/Chair

Date