



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16, Housing (Scotland) Act
2014**

Chamber Ref: FTS/HPC/PR/21/0249

**Re: Property at 3F1 80 Leamington Terrace, Bruntsfield, Edinburgh, EH10 4JU
("the Property")**

Parties:

**Mr Calum Smith, Flat 130/2 Marchmont Road, Edinburgh, EH9 1AQ ("the
Applicant")**

**Mr Jonathan Narro, Ms Kate Narro, UNKNOWN, UNKNOWN ("the
Respondents")**

Tribunal Members:

Shirley Evans (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondents failed to comply with their duty as Landlords in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") and accordingly make an order for payment in the sum of EIGHT HUNDRED AND TWENTY FIVE POUNDS (£825.00) STERLING against the Respondents. The order for payment will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by either Respondent.

Background

1. By application dated 24 January 2021 the Applicant's representative applied to the First-tier Tribunal for Scotland (Housing and Property) Chamber for an order for payment where a landlord has not paid a deposit into an approved scheme in terms of the Regulation 3 of Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations"). The Applicant lodged a copy Private Residential Tenancy Agreement between the Applicant and three joint tenants and the Respondents in relation to the Property, a screenshot of a

payment for £550 to Umega Lettings dated 26 February 2020, a Deposit Protection Certificate from Safe Deposits Scotland (“SDS”), two emails to the Applicant dated 18 November 2020 and 21 January 2021 from SDS and a further email dated 1 December 2020 from SDS.

2. On 11 February 2021, the Tribunal issued a Notice of Acceptance of the Application under Rule 9 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
3. The Tribunal assigned a Case Management Discussion (“CMD”) to proceed on 29 March 2021. However, the application and papers could not be served at the Respondents’ address after confirmation from Sheriff Officers that the Respondents did not live at the address. In the circumstances, a new CMD was assigned to proceed on 27 April 2021. As the Respondents’ whereabouts were unknown, the Tribunal served the application on the Respondents by advertising the application in terms of Rule 6A of the Regulations. A copy of the Execution of Service dated 27 April 2021 was received by the Tribunal.
4. The Applicant’s representative lodged written submissions ahead of the CMD.

Case Management Discussion

5. The Tribunal proceeded with the Case Management Discussion on 27 April 2021. The Applicant was personally present and was represented by Ms Navickaite, a Lay Representative from the Aberdeen Law Project. There was no appearance by or on behalf of the Respondents despite the teleconference starting 10 minutes late to allow the Respondents plenty of time to join. The Tribunal was satisfied the Respondents had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in their absence.
6. Ms Navickaite explained that the Applicant was one of four joint tenants at the Property. There had been a previous tenancy agreement which the Applicant had not been party to, but which the other three joint tenants had been party to. She explained that the Applicant replaced a previous tenant. The tenancy agreement started on 1 May 2020. The Applicant had paid £550 deposit to Umega Lettings on 26 February 2020 as requested by Umega and the Tribunal was referred to the screenshot from the Applicant’s mobile banking which was lodged. She went on to explain that the three other existing tenants’ deposits were already held in Safe Deposit Scotland (“SDS”). She referred to an email from SDS to the Applicant dated 18 November 2020 which stated the Applicant’s deposit had been paid on 7 October 2020, the Certificate DAN 548033 from SDS which also showed the deposit was paid on 7 October 2020 and relating to all 4 deposits totalling £2200 and an email from SDS to the Applicant dated 21 January 2021 which referred to the “top up” received on 7 October 2020 and that the Applicant’s £550 was allocated to the deposit account on 8 October 2020. The tenancy agreement terminated

on 7 November 2020 and the Applicant received £516 of his deposit back on 3 December 2020.

7. The Tribunal questioned Ms Navickaite as to when in her submission the deposit should have been paid into SDS. Whilst her written submissions had referred to the deposit being unprotected for a period of 5 months when questioned by the Tribunal she accepted the date the deposit should have been paid in terms of Regulation 3 of the 2011 Regulations was 12 June 2020, being 30 working days from 1 May 2020 and that the period therefore the deposit was at risk was from 12 June - 7 October 2020. With reference to her written submissions she submitted that in terms of Regulations 3 and 10 of the 2011 Regulations a fair just and proportionate sanction in all the circumstances should be the maximum penalty of three times the deposit. She was not able to refer the Tribunal to any particular prejudice the Applicant had suffered in the circumstances by the Respondents' failure to lodge the deposit in accordance with the 2011 Regulations.

Findings In Fact

8. The Applicant paid a deposit of £550 to the Respondents' letting agents Umega Lettings on 26 February 2020.
9. The tenancy agreement between the Applicant and the Respondents with three other joint tenants commenced on 1 May 2020 and terminated on 7 November 2020.
10. The other three joint tenants had had a previous tenancy with the Respondents and had had their deposits placed with SDS.
11. The Respondents did not pay the Applicant's deposit into an approved scheme within 30 working days of the start of the tenancy agreement on 1 May 2020. The Applicant's deposit was therefore unprotected from 12 June - 7 October 2020.
12. The Applicant's deposit was paid into SDS on 7 October 2020. The deposit was allocated to the same account as the three joint tenants on 8 October 2020 under Certificate DAN 548033. The Applicant received £516 of his deposit after the termination of the tenancy agreement.
13. The Application was made on 24 January 2021.

Reasons For Decision

14. For the purpose of Regulation 9(2) of the 2011 Regulations the Tribunal found that the application of 24 January 2021 was made in time within 3 months of the tenancy termination on 7 November 2020. The 2011 Regulations were intended, amongst other things to put a landlord and a tenant on equal footing

with regard to any tenancy deposit and to provide a mechanism for resolving any dispute between them with regard to the return of the deposit to the landlord or tenant or divided between both, at the termination of a tenancy.

15. The amount to be paid to the Applicant is not said to refer to any loss suffered by the Applicant. Accordingly, any amount awarded by the Tribunal in such an application cannot be said to be compensatory. The Tribunal accepted Ms Navickaite's submissions that in assessing the sanction level the Tribunal has to impose a fair, proportionate and just sanction in the circumstances, always having regard to the purpose of the 2011 Regulations and the gravity of the breach. The Regulations do not distinguish between a professional and non-professional Landlord. The obligation is absolute on the Landlord to pay the deposit into an approved scheme.
16. In assessing the amount awarded, the Tribunal has discretion to make an award of up to three times the amount of the deposit, in terms of Regulation 10 of the 2011 Regulations. Whilst Ms Navickaite had invited the Tribunal to award the maximum sum, she was not able to refer to any particular hardship or prejudice the Applicant had suffered as a result of the Respondents' failure. The Tribunal was therefore not minded to award the maximum sanction.
17. Having regard to the circumstances of the case, whilst it was clear the Respondents had failed in their duties to pay the deposit into a scheme within 30 days, the Regulations had not been entirely defeated as the deposit was paid into SDS, although 3 and a half months late. Thereafter the deposit had received the full protection of the scheme as the 2011 Regulations had intended and indeed had been repaid to the Applicant in accordance with the 2011 Regulations after termination of the tenancy. This was not a case where the Respondents had ignored the scheme in its entirety which would have led to total defeat of the 2011 Regulations and possibly severe prejudice to the Applicant.
18. The Tribunal considered the length of time the failure to comply with the 2011 Regulations being from 12 June 2020, when the deposit should have been paid into a scheme in terms of Regulation 3, until 7 October 2020 when it was paid. The Tribunal also considered that the deposit had not been afforded the protection of an approved deposit scheme for approximately half the tenancy. In all the circumstances, the Tribunal considered a fair, just and proportionate sanction against the Respondents to be £825, being half the maximum sanction that could be imposed.

Decision

19. The Tribunal made an Order for Payment by the Respondents 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.

Shirley Evans

27 April 2021

Legal Member

Date