



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

Chamber Ref: FTS/HPC/PR/21/0976

Re: Property at 17 Cumming Drive, 0/1, Glasgow, G42 9AE (“the Property”)

Parties:

**Miss Michelle Sweeney, 7 Lochview Wynd, Bishopton, Renfrewshire, PA7 5GB
 (“the Applicant”)**

**Mr Gurnair Shaan, 264 Kings Park Road, Glasgow, G44 4JE (“the
 Respondent”)**

Tribunal Members:

Alison Kelly (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision (in absence of the Applicant)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
 Tribunal”) determined that the Respondent was in breach of the regulations
 and should pay the Applicant the sum of £300.**

Background

The background to the case is laid out in the Case Management Discussion Note dated 28th June 2021.

At the Case Management Discussion (“CMD”) on 20th June 2021 the Tribunal made the following Findings In Fact:

1. The Applicant paid the respondent £100.05 in November 2019 by way of three payments, comprising two payments of £50 and another of 5p.
2. Parties agreed the monthly rent for the property would be £600.
3. A tenancy agreement was signed on 19th December 2019. This showed the tenancy deposit of £600 in Clause 12. The Applicant moved in to the property on that date.

4. The Applicant paid the Respondent £250 on 4 December 2019, £750 on 19 December 2019 towards the rent and deposit, £650 plus £50 on 28 January 2020, £50 on 17 February 2020 and £223 on 19 February 2020.
5. The Respondent paid £600 deposit in to SDS on 26 February 2020.
6. The parties entered into a tenancy agreement with a commencement date of 19 July 2020.
7. The Applicant left the property and the tenancy agreement terminated on 19 April 2021.

The Tribunal did not have copies of the leases before it and wanted to explore the circumstances of why and how the first lease was allegedly terminated on 18 July 2020 or whether it could be said that the first lease had continued. This would determine whether the Applicant's application had been made timeously.

The case was continued to a Hearing to take place by teleconference on 9th August 2021.

On 2nd July 2021 the Tribunal Administration sent an email to each party attaching the date, time and call in details for the Hearing.

On 26th July 2021 the respondent lodged by email the two tenancy agreements.

On 28th July 2021 the Applicant responded by sending an email to the Tribunal.

On 2nd August 2021 the Respondent sent an email further responding.

Hearing

The Hearing took place by teleconference on 9th August 2021 at 10am. The Applicant did not dial in and was not represented. The Respondent dialled in and represented himself.

The Tribunal considered that in terms of Rule 29 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules") they were satisfied that the Applicant had been given notice of the Hearing in terms of Rule 24(1) and decided, having regard to the overriding objective of the Tribunal, to deal with proceedings justly, to proceed with the Hearing.

The Chairperson made introductions and explained the purpose of the Hearing.

The Chairperson asked the Respondent if he could explain why there were two tenancy agreements. He said that his brother was managing the property for him initially. He said that the Applicant had told his brother that she wanted a new lease. He said that he prepared the second lease himself. He got the style from a friend who rents out properties. He did not use a solicitor. His signature on the lease was witnessed by Sarah Drummond, who was his friend. He said that at the time the new lease was signed the Applicant was in arrears, but he set them aside. He said that one of the reasons for the new lease was that his brother was no longer managing the property and he had taken over. He did not recall the Applicant saying that she

needed a new lease for any particular purpose. The Tribunal made reference to a text message lodged by the Applicant where she made reference to hoping that the lease would be “renewed”. The Respondent was asked if he was under the impression that the original lease had expired. He said that he was not. After some probing, he confirmed that the arrears at the time of the first lease purportedly coming to an end amounted to £300.

The Respondent was asked what had happened to the deposit when the Applicant finally vacated. He said that he had applied to SDS for it to be returned to him. The Applicant did not respond to SDS and accordingly the deposit was returned to his bank account. The Respondent was asked if it was all applied to the rent account. After some probing, he confirmed that the property had not been fully empty or clean at the end of the tenancy and that the deposit was returned to him partly because of that. He could not give exact figures for the split.

The Respondent submitted that the application was out of time. It had to be brought within three months of the end of the tenancy, and the original tenancy ended on 1st July 2020.

The Respondent said that he contacted SDS and they said that he did not need to return the deposit to the Applicant, get it back from her and re-lodge it, it could be carried over to the new tenancy.

The Respondent was asked how the first tenancy was brought to an end. He did not seem to understand the question, but suggested it came to an end when the new one started.

The Tribunal moved on to the issue of when payments were made by the Applicant and sought clarity on the payment of £100.05 made in November 2019, before the tenancy commenced. The Applicant had said at the CMD that it was some sort of “holding deposit”. The Respondent said that he had spoken to his brother, and it was not a holding deposit. He said that the Applicant had wanted new carpets in the two bedrooms. His brother was not prepared to agree as he had just had the carpets cleaned. They agreed to pay half each and this is what the £100.05 was for. The Tribunal asked if the money had been applied to the rent account. The Respondent said it had not, as it had been used to buy carpets.

The Respondent was asked about the agreement with the Applicant prior to when she moved in regarding when payments should be made. He was given the opportunity to call his brother as a witness to this, but declined and said he would give evidence himself about it.

The Respondent said that it was agreed that the Applicant would pay £1200, being £600 deposit and £600 rent on the day she moved in, 19th December 2019. She did not do so, and she was always late with her payments. The Respondent said that he had not realised that he could part of a deposit amount in to the Scheme, he thought that he had to pay the full amount. He said that this was his first property, his brother was managing it, and he should have taken more care himself. As soon as there were sufficient funds received from the Applicant to pay the mortgage he paid the deposit in to the Scheme.

The Respondent was asked about his duty under Regulation 42 to provide the Applicant with information. He said that he had given her a copy of the SDS Deposit certificate.

The Tribunal adjourned to consider their decision.

Further Findings In Fact

1. The Respondent did not send information to the Applicant as required by Rule 42 of Tenancy Deposit Schemes (Scotland) Regulations 2011.
2. The Respondent did not take any formal steps to bring the first lease to an end.
3. The deposit rolled over from the first lease to the second lease.

Reasons For Decision

The Respondent contended that the Applicant should have brought her application to the Tribunal within three months of the first lease coming to an end, and she was therefor time barred. The Tribunal did not agree. The deposit rolled over from the first lease to the second. For this argument to be successful the deposit would have required to have been lifted from the scheme and relodged. The application was not time barred.

Rule 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("TDS") states:

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.

(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.

(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.

The tenancy began on 19th December 2019. The Applicant paid the sum of £250 to the Respondent on 4th December 2019 and £750 on 19th December 2019. The deposit was £600. This meant that by 19th December 2019 the Respondent had received at least £600 from the applicant. Rule 3 says that the deposit must be placed in a Scheme within 30 working days of the beginning of the tenancy. The Rule is absolute and therefor the respondent erred in treating the money received as rent rather than deposit. It is clear from the Rules that the deposit is the priority payment. The Respondent is therefor in breach of Rule 3.

Rule 42 of TDS provides:

42.—(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.

The Respondent provide the Applicant with a copy of the Deposit Certificate from SDS. This certificate does not contain all the information required by Rule 42. The Respondent is therefore in breach of Rule 42.

Rule 10 gives the Tribunal power to impose a sanction of up to three times the amount of the deposit. The amount is at the discretion of the Tribunal. The Tribunal did not consider this breach to be at the serious end of the spectrum. The deposit was put in to the Scheme on 26th February 2020, meaning it was not unprotected for very long. The information in terms of Rule 42 should also have been sent to the Applicant. The Tribunal decided to impose a sanction of £300.

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.


Alison Kelly

10/08/2021

Legal Member/Chair

Date