



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

Chamber Ref: FTS/HPC/PR/21/1070

Re: Property at 48 Glenshee, Whitburn, EH47 8NY (“the Property”)

Parties:

Mr Gordon Irvine, 7 Fauldhouse Road, Longridge, West Lothian, EH47 8AQ (“the Applicant”)

Mrs Laura Haig, 1 River View, Lanark, ML11 8TJ (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mrs E Dickson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted in favour of the Applicant in the sum of £1700.

Background

1. This is an application received in the period between 6th and 18th May 2021, made in terms of Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”). The Applicant is seeking an order for payment against the Respondent arising from her failure to lodge a tenancy deposit in respect of a tenancy of the Property. There is no written tenancy agreement. The tenancy commenced on 28th January 2020 and ended on 30th April 2021. The rent was £850 per month. A tenancy deposit was paid by the Applicant to the Respondent on or around 5th January 2020 in the sum of £850. The Applicant was seeking an award of three times the tenancy deposit.
2. Both parties lodged written representations and productions for this case and the case FTS/HPC/CV/21/1175, including photographs of the Property and screenshots of social media messages.
3. A Case Management Discussion (“CMD”) took place on 30th August 2021. Following discussion, it was agreed that the tenancy deposit had not been

paid into an approved tenancy deposit scheme ("TDS"), and that the issue to be considered by the Tribunal was the amount of the order for payment to be made in favour of the Applicant. A Direction was issued and the case was set down for a hearing.

4. By emails dated 16th August and 9th September 2021, the Respondent lodged written representations and productions.
5. By email dated 30th August, and 8th and 20th September 2021, the Applicant lodged written representations and productions, including voice recordings of conversations between the parties.

The Hearing

6. A hearing took place by telephone conference on 21st September 2021. Both parties were in attendance. The Respondent was supported by her husband, David Haig.

Preliminary Matters

7. The Tribunal raised a number of preliminary matters:

(i) The status of Mr David Haig

Following discussion, it was agreed he was attending as the Respondent's supporter.

(ii) The lodging of late evidence

The Applicant had lodged documents the day before the hearing. Responding to questions from the Tribunal, he said the messages lodged had been on his daughter's phone and she had lost the phone. She got a new phone a few weeks ago but only discovered at the weekend how to download the old messages. They related to the deposit and viewing of the Property. The Respondent said she had received the messages but had not yet had an opportunity to view them.

The Tribunal adjourned to consider matters and decided not to allow the lodging of late evidence. Parties had been informed at the CMD of the need to lodge evidence timeously, and both had had sufficient time to provide all the evidence required.

The Applicant's position

8. The Applicant referred to voice recordings 1 and 2 that indicated the Respondent had said on 4th March 2020 that she would pay the deposit into a TDS. He had asked her whether it was too late to pay it into a TDS and she had stated that it was not too late and she would do this. He followed this up

by providing his email address (Figure 4). He heard nothing further and presumed the deposit had been lodged in a TDS. It was only at the end of the tenancy that he discovered it had not been lodged.

9. The Applicant denied that there had been any discussion with the Respondent at the start of the tenancy that the deposit would be kept in a saving account. The Respondent had lodged a statement from her husband stating that he was present when this discussion took place at the viewing of the Property. The Applicant had lodged a statement from his daughter stating that the Respondent's husband was not present at the viewing of the Property.
10. The Applicant said he was seeking three times the tenancy deposit because the Respondent owns other properties. She had lodged statements from tenants indicating that she had owned the properties for longer than she had disclosed at the CMD. The Respondent has rented properties since 2016 and has not put any deposits in a TDS. The Respondent had not properly registered as a landlord in respect of the Property. If she had lodged his deposit in a TDS, he would have had the benefit of adjudication at the end of the tenancy.

The Respondent's position

11. The Respondent referred the Tribunal to a statement from a professional that indicated personal difficulties in her life from 2016 to 2018 and again from 2020 to 2021. The Respondent said the difficulties had impacted upon her capacity to deal with matters relating to letting her properties. Responding to questions from the Tribunal as to why she had not lodged the deposit following the discussion with the Applicant and receipt of the Applicant's email address, she said she could not remember the discussion, due to her personal difficulties.
12. The Respondent said she had missed an email regarding renewal of her landlord registration when it went into her junk mail, but she had rectified the position. She is in the process of passing the management of her properties to a letting agent to avoid any further difficulties.
13. The Respondent said she has three rental properties, two of which are residential lets. She had lodged statement from her tenants that show she is a good landlord. She thought the tenancy deposit scheme was voluntary. There was a conversation with the Applicant at the time of viewing the Property regarding not lodging the deposit and he was agreeable. She has now lodged all tenancy deposits in a TDS. She felt she had been a good landlord and had a good relationship with the Applicant during the tenancy.
14. It was the Respondent's position that the Applicant was trying to benefit from her ignorance. Any award granted should not be large.

Findings in Fact and Law

- 15.
- (i) The tenancy deposit of £850 paid by the Applicant on or around 5th January 2020 was not lodged with an approved tenancy deposit scheme and remained unprotected throughout the duration of the tenancy.
 - (ii) The Respondent has breached Regulation 3 by failing to pay the deposit into an approved tenancy deposit scheme timeously.

Reasons for Decision

16. The Regulations were put in place to ensure compliance with the tenancy deposit scheme, and to provide the benefit of dispute resolution for parties. The Tribunal considers that its discretion in making an award requires to be exercised by ensuring that it is fair and just, proportionate and informed by taking into account the particular circumstances of the case.
17. The Tribunal took guidance from the decision of the Upper Tribunal UTS/AP/19/0020 which states: *'Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals.'*
18. The Tribunal considered this to be a serious matter, with the deposit unprotected throughout the duration of the tenancy; however, the Tribunal did not consider it to be a case at the most serious end of the scale.
19. The Tribunal took into account the mitigating circumstances put forward by the Respondent. However, the Tribunal felt that there had been a failure by the Respondent to recognise her responsibilities as a landlord, particularly given that she was aware of the Regulations, and that she has been letting more than one property since 2016. It was incumbent upon her to ensure that she complied with her legal duties and responsibilities as a landlord.
20. Taking all the circumstances into account, the Tribunal decided it would be fair and just to award a sum of £1700 to the Applicant, which is two times the tenancy deposit.


Decision

21. An order for payment in the sum of £1700 is made in favour of 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.


Helen Forbes



Legal Member/Chair

21st September 2021
Date