



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/21/1103

Re: Property at 17/3 Ferry Road Avenue, Edinburgh, EH4 4BE (“the Property”)

Parties:

Miss Julija Polevaja, 177/2 Pleasance, Edinburgh, EH8 9RU (“the Applicant”)

Li Lin, 61 Bridge St, Kington, HR5 3DJ (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment is granted against the Respondent in the sum of SIX HUNDRED POUNDS (£600) STERLING.

- Background
- 1. An application was submitted to the Tribunal under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. Said application sought an order be made against the Respondent on the basis that the Respondent had failed to comply with her duties to lodge a deposit in a tenancy deposit scheme within 30 working days of the start of the tenancy in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”).
- 2. A Case Management Discussion (“CMD”) took place on 14 July 2021, by tele-conference. The Applicant was personally present and represented herself. There was no appearance by or on behalf of the Respondent. The application had been served on the Respondent by Process Server on 7 June 2021 by way of letterbox delivery to the address of Flat 5, 106 Lisson Grove, London, NW1 6LP being the address of the Respondent detailed in the Application. The

execution of service from the Process Server having confirmed that they had established that the Respondent resided at the address.

3. The Applicant sought an order from the Tribunal on the basis that the Respondent had failed to comply with their duties to lodge a deposit in a tenancy deposit scheme within 30 working days of the start of the tenancy in terms of Regulation 3 of the 2011 Regulations. The Tribunal was satisfied that the Respondent was in breach of their duties under Regulations 3 and 42 as aforesaid. The Tribunal granted an order against the Respondent for payment to the Applicant in the sum of £600.
4. On 5 August 2021 the Respondent emailed the Tribunal administration advising that they had not attended the CMD as they no longer lived at the address in the application and had not received any of the correspondence from the Tribunal. The Respondent asked for a copy of the written decision and guidance to appeal.
5. On 9 August 2021 the respondent lodged an application seeking recall of the decision, stating that her failure to appeal was due to the application not having been served on her. She only became aware of the application when the Applicant forwarded the decision to her on 2 August 2021. The Tribunal determined that it was in the interests of justice that the application for recall of the Decision of the Tribunal dated 14 July 2021 was granted. The application was remitted back to a CMD.
6. A further CMD took place on 15 November 2021 by tele-conference. Both parties appeared and represented themselves. The Respondent submitted that the existing tenant in the property ("Rogerio") asked her to help his friend (the Applicant) whose accommodation had fallen through and allow her to move into the property. The Respondent had not intended to enter into any formal arrangement with the Applicant and no lease was signed. All communication was made via Rogerio. No credit checks were carried out nor references sought. The Applicant was dealing with a number of personal issues and suffering from depression at the time the Applicant moved into the property. She forgot to lodge the deposit within a tenancy deposit scheme within the 30 day timescale. She then remembered and asked the Applicant for her email address on a number of occasions commencing in October 2020, so that she could lodge the deposit with a scheme, but the Applicant failed to provide her with the necessary details. It was not possible to lodge the deposit within the scheme without having an email address for the tenant. It was due to the Applicant's failure to provide her with her email address until May 2021, that the deposit was not lodged until then. The Respondent submitted that an award should only be granted on the lower end of the scale, as there was no intention to withhold the deposit, and it had since been returned. The Applicant denied that she had ever been asked for her email address prior to the end of the tenancy, when she asked for return of her deposit.

7. The CMD was adjourned and a Hearing fixed to determine whether or not the Respondent was prevented from lodging the deposit with a tenancy deposit scheme during the course of the tenancy, and thereafter the level of Order which should be granted in terms of Regulation 10.
8. A Direction was issued on 15 November 2021 in terms of which the Respondent was required to provide:
 - (i) any evidence of communications which took place between the parties where the Respondent requested the Applicant's email address and any other personal details;
 - (ii) Evidence of what information requires to be provided to a tenancy deposit scheme to enable a tenancy deposit to be lodged.

with the said documentation to be lodged with the Chamber no later than 14 days prior to the Hearing.

9. A Hearing was originally fixed for 21 January 2022. On 20 January 2022 the Respondent sent an email to the Tribunal administration in response to the Direction. In said email the Respondent advised that she had corresponded with her previous tenant "Rogerio" to seek contact details from the Applicant but could not lodge copies of such correspondence as her phone had been stolen and this information lost. She had repeatedly asked Rogerio for the Applicant's personal information but this had not been provided. A foreign mobile number had been given to the Respondent for the Applicant but this had thereafter been deleted by the Applicant. A screenshot of a page from Letting Protection Scotland was also lodged which purported to show the information required to be able to lodge a deposit online. However, that screenshot only showed a small proportion of the webpage, rather than the full page, and therefore did not show the information required.
10. The Hearing scheduled for 21 January 2022 was discharged due to the Respondent's ill health, and a new date was fixed for 7 March 2022.

- The Hearing

11. The Hearing on 7 March 2022 took place by tele-conference. Both parties appeared personally and again represented themselves.
12. The Applicant again moved for an order for payment to be granted. She had paid a deposit to the Respondent which had not been paid into a tenancy deposit scheme within the statutory 30 day period from commencement of the tenancy. She had entered into a tenancy with the Respondent which commenced 1 July 2020. No written tenancy agreement had been provided to her. A deposit of £300 was paid to the Respondent. The tenancy ended on 30

April 2021. When the Applicant requested repayment of her deposit this was refused. When she asked the Respondent why the deposit had not been put into a tenancy deposit scheme, the Respondent told her she hadn't been able to do so as she didn't have the Applicant's email address. The deposit was thereafter paid by the Respondent into a deposit scheme on 10 May 2021. Since raising the application, the Applicant has applied to the scheme for return of the deposit, and this was repaid to her in full in June 2021.

13. The Applicant submitted that the Respondent had never asked her to confirm her full name or email address. The mobile number referred to in the Respondent's email to the Tribunal of 20 January 2022 is a Lithuanian number. The Applicant confirmed that this was a valid number during the course of the tenancy with which the Applicant contacted her family and friends in Lithuania (where she is originally from), and this number was only terminated recently. The Respondent did not contact the Applicant on this number to request any personal information during the tenancy. However, the Respondent did use this number as a method of contacting her during the tenancy agreement for other matters, such as requesting access for tradesmen.
14. The Respondent submitted that she could not lodge the deposit into the tenancy deposit scheme because she needed the tenant's surname, UK number and email address in order to do so. She had contacted the previous tenant, Rogerio, multiple times for this information to be provided but he did not do so. Rogerio told her that the Applicant would prefer to have the deposit returned to her directly, rather than be placed into a tenancy deposit scheme. The Respondent's phone was stolen last year and she cannot produce these text message conversations to show what was discussed. The Applicant only got in contact with the Respondent at the end of the tenancy to ask for the return of her deposit. Only at that point did she provide the relevant information to enable the deposit to be lodged in the scheme. The Respondent submitted that to lodge a deposit using the scheme's online service, you must have a full name (including surname), UK phone number and email address. As she did not have these things, she was prevented from depositing the sum. The Respondent referred to the Letting Protection Scotland screenshot she had lodged, as evidence to this effect. The failure to lodge was not intentional, but due to the lack of information available to her. The Respondent submitted that she had not asked the tenant directly because she did not have a contact number for her. The Respondent confirmed when asked, that she had not attempted to write to the property to try and get in contact, nor did she send a local agent or tradesman round to try and speak to the Applicant on her behalf. When asked what reference was put against the rental payments to her bank account from the Applicant, the Respondent was unable to confirm if this showed a name or not. When asked if she had telephoned or emailed the tenancy deposit scheme to explain the situation and seek an alternative way of lodging the deposit, the Respondent confirmed she had not made any such attempts. The Respondent confirmed that she has four properties in Edinburgh that she rents out. Whilst she has a letting agent assisting her now, she did not have one at the time of entering into this tenancy with the Applicant. She submitted that she had no intention of withholding the deposit, but had no way of lodging it with a scheme.

- Findings in Fact

15. The Tribunal made the following findings in fact:

- (i) The parties entered into a private residential tenancy which commenced 1 July 2020
- (ii) The Applicant paid a deposit of £300 to the Respondent;
- (iii) The Respondent failed to timeously lodge the deposit of £300 into an approved tenancy deposit scheme under Regulation 3 of the 2011 Regulations;
- (iv) The Respondent failed to provide the statutory information to the Applicant under Regulation 42 of the 2011 Regulations;
- (v) The Tenancy ended on 30 April 2021;
- (vi) The Deposit had been lodged by the Respondent into an approved tenancy deposit scheme on 10 May 2021. This had since been repaid to the Applicant by the deposit scheme.

- Findings in Law

16. The Tribunal made the following findings in law:

- (i) The Respondent was in breach of their duties under Regulation 3 of the 2011 Regulations, which states as follows:

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.

- (ii) The Respondent was in breach of their duties under Regulation 42 of the 2011 Regulations, which states as follows:

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.

17. The Tribunal must grant an order in terms of Regulation 10 which states as follows:

10. *If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—*

(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 sheriff 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.

- Reasons for Decision

18. The Tribunal was satisfied that the Respondent was in breach of their duties under Regulations 3 and 42 as aforesaid, and this was by the Respondent's own admission. The 2011 Regulations were introduced to provide security for tenants in paying over deposits to landlords and to address an issue with some landlords taking tenancy deposits and then failing to pay them back where they were lawfully due at the end of the tenancy. The 2011 Regulations also provide that parties have access to an independent and impartial dispute resolution mechanism within a scheme to address any deposit deductions which require to be considered.

19. By the Respondent's failure to timeously lodge the deposit into an approved tenancy deposit scheme the deposit was not protected for a period of 10 months and 10 days. The Tribunal considered this to be a significant period of time for a deposit not to have been held securely.

20. It appeared to the Tribunal that the creation of this tenancy was done in a somewhat relaxed and unprofessional manner. The Respondent has four properties which she rents out in Edinburgh and accordingly she should be well aware of her obligations and legal duties as a landlord in Scotland. It was concerning to the Tribunal that a tenancy agreement had not been provided, nor basic information obtained from the Applicant prior to the tenancy or thereafter. Given that she resides in London, if she didn't consider that she could adequately manage her properties whilst living so far away, and particularly during the pandemic when travel was restricted, then the Respondent should have taken appropriate steps to instruct a letting agent to act for her, to ensure her obligations were being met.

21. The Tribunal was not satisfied that the Respondent had taken reasonable steps to obtain the necessary personal information from the Applicant either prior to, or during, the tenancy. The Respondent claimed that the foreign mobile number she had for the Applicant was deleted shortly after the start of the tenancy meaning she had no method of contacting the Applicant. The Applicant denied this and submitted that the Respondent had contacted her on that number during the tenancy for other matters. Whilst there was no evidence lodged by the Applicant to show what conversations had taken place via that mobile number, the Tribunal considered the Applicant to be both credible and reliable in her evidence. The Tribunal did not consider that the Respondent had taken any steps whatsoever to try and ascertain whether there was another way of lodging the tenant's deposit when the online system wouldn't allow her to do

so. She could have easily called or emailed the tenancy deposit scheme and explained the situation to ascertain if there was another solution, but she did not do so. Nor did she contact any of the other tenancy deposit schemes to find an alternative. Whilst it is acknowledged that the deposit was lodged in May 2021 and thereafter returned in full to the Applicant by the deposit scheme provider, the Respondent was in clear breach of her legal obligations by not lodging the deposit and did not satisfy the Tribunal in her submissions that she had taken any reasonable steps to try and rectify the situation during the course of the tenancy.

- Decision

22. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent(s) for payment to the Applicant in the undernoted sum:

SIX HUNDRED POUNDS (£600) STERLING

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.

F. W

Legal Member/Chair

Date: 7 March 2022