



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/21/1313

Re: Property at 196/4 Morrison Street, Edinburgh, EH3 8EB (“the Property”)

Parties:

Mr Amambo Essien, 9/1 Home Street, Edinburgh, EH3 9JR (“the Applicant”)

Mrs Reena Khanna, Syozant Properties, UNKNOWN, UNKNOWN; UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member)

Decision (in absence of the Respondent)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) being satisfied that the Respondent as landlord of the property at 196/4 Morrison Street Edinburgh EH3 8EB (“the Property”) did not comply with any duty in Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011, makes an order for the Respondent to pay to the Applicant the sum of two thousand eight hundred and twenty five pounds (£2925).

1. This was a case management discussion ‘CMD’ in connection with an application in terms of Rule 103 of the First-tier Tribunal for Scotland (Procedure) Regulations 2017 ‘the rules’ for an order for a penalty in terms of Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011, (‘the regulations’). The application was sent to the tribunal on 1 June 2021 and the tribunal accepted the application on 16 July 2021. The applicant attended the CMD. The respondent did not attend and was not represented. Due to sheriff officer’s being unable to effect service, the application proceeded by way of service by

advertisement. The tribunal had sight of the certificate of service by advertisement and proceeded with the CMD in terms of rule 24 and 29. There was a second application before the tribunal in terms of rule 111 to recover the deposit.

2. The tribunal had before it the following copy documents: -

- (1) Application dated 1 June 2021.
- (2) Undated tenancy agreement entitled 'Short Lets Tenancy Agreement'.
- (3) Whatapp messages regarding let of the property, payment and return of the deposit.
- (4) Website advert for the property.
- (5) Email from applicant to respondent dated 13 May 2021 requesting return of the deposit.
- (6) Applicant's submissions to the tribunal.
- (7) Receipts for deposit dated 23 November 2020 and 2 December 2020.
- (8) Sheriff officer's report dated 2 August 2021.

Preliminary matters

3. The tribunal noted that the sheriff officer's report dated 2 August 2021 stated that they had made inquiries at the address for the respondent given by the applicant (9 Horn Lane London W3 9NJ). They had been unable to serve the papers but were able to confirm that the respondent is female, and she is the owner of that London property. The applicant stated that he had always dealt with a male and he had assumed that the person referred to in the tenancy agreement was the person he had been dealing with throughout the tenancy. The tribunal noted that Reena Khanna was the owner of the property and was the landlord referred to in the tenancy agreement and therefor allowed the application to be amended from 'Mr' to Mrs Rheena Khanna. The applicant now understands that this must have been an individual acting on behalf of the landlord and owner Mrs Rheena Khanna.
4. The applicant clarified that the deposit paid was £975 and that this is made up of two sums of £325 and £650 as per the two receipts lodged.
5. The applicant stated that he had made reference to a holiday let in his submissions because the landlord's representative made reference to a holiday let when the applicant gave one month's notice of his intention to give up the tenancy on 31 March 2021. The applicant stated he and his wife lived in the property. They had one bedroom and made use of the bathroom kitchen and lounge. There were two other rooms in the property which were locked and they did not have access to them. It was the applicant's position that the property was a private residential tenancy.
6. The applicant clarified that the tenancy started on 19 December 2020 and he left the property on 30 April 2021.

7. The applicant stated he signed the tenancy agreement and returned it to the respondent. He asked the respondent's representative if it could be amended to reflect his deposit of £975. The respondent's representative declined to amend the agreement and a signed copy was never sent to the applicant.
8. Clause 16 of the agreement makes reference to a deposit of £1950 but the applicant stated that this was the payment of three months rent which he was obliged to pay in advance. This sum is referred to in the receipt dated 2 December 2020 as 'rent for initial three months £1950'.

The applicant's position.

9. The applicant and his wife were from Nigeria and came to Edinburgh in 2020 to study at Edinburgh University. The applicant saw the property online via the advert lodged and paid a deposit of £975 and three months' rent in advance. The money was paid to Syozant Properties Sai Ltd. This company was referred to in the original advert for the property. Clause 51 of the tenancy agreement provides: for any matter relating to this tenancy the contact information for the Property Manager of the landlord is Syozant Properties Sai Ltd. The applicant contacted the respondent's representative via Whatsapp on 1 December 2020 and stated that by law the landlord is required to deposit the deposit of £975. The deposit was not lodged in a deposit scheme within 30 working days of the start date of the tenancy. The deposit has never been lodged. The applicant was told in message 'for short rentals, deposit is maintained by agency and as said not to be bothered much'.
10. The applicant also pointed out that he should have been given a private residential tenancy agreement. The applicant gave notice that he was leaving the property on 31 March 2021. The respondent's representative refused to return the deposit. The applicant was told that one month's rent would be deducted, and he would get the balance 14 days after he left the property. The deposit has not been returned.

11. Findings in fact

- The respondent is the owner of the property.
- The applicants rented the property from the respondent from 19 December 2020 until 31 March 2021.
- The applicant paid a deposit of £975 to the respondent's agents Syozant Properties Sai Ltd in two tranches: £650 on 23 November 2020 and £325 on 2 December 2020.
- The deposit was not lodged into an approved scheme within 30 working days of 19 December 2020.
- The deposit was remains unprotected.

12. Findings in law

- The tenancy was a relevant tenancy for the purposes of the regulations.
- The application was made within 3 months of the tenancy coming to an end.

Reasons

13. This was a timeous undefended application to obtain a penalty for a failure to lodge a tenancy deposit in an appropriate scheme. Firstly, the tribunal was satisfied that the tenancy the applicant entered into was a 'relevancy tenancy' in terms of regulation 3 of the regulations as the landlord is a relevant person, the applicant is an unconnected person to the respondent and the property does not fall within the exclusions of s83(6) of the Antisocial Behaviour Etc (Scotland) Act 2004. That being the case, the tribunal was satisfied that this was a clear breach of the regulations. The deposit had not been lodged and none of the notifications required in terms of regulation 42 of the regulations had been carried out.

14. Having decided on the clear oral and written evidence that this was a clear breach, the tribunal had to decide on the gravity of the breach. The tribunal reviewed all of the recent cases regarding tenancy deposit schemes and noted that in the case of Kirk-v-Singh 2015 SLT (Sh Ct) 111 sheriff Jamieson was mindful of the need to:-

proceed to impose a sanction which is "fair, proportionate and just having regard to the seriousness of the noncompliance.

15. The tribunal considered this to be a major breach. The breach appears to be wilful as on 1 December 2020 the applicant drew the respondent's representative's attention to the need to lodge the deposit. He responded and said it was not necessary as the agreement was only for a short rental period. Further, the deposit has never been returned. The respondent has not entered appearance and in the absence of any mitigating factors the tribunal decided that the maximum penalty of three times the deposit namely £2925 is fair proportionate and just in all of the circumstances.

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.



17 September 202

Lesley A Ward Legal Member

Date