



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/21/1489

Re: Property at 13/8 Union Lane, Perth, PH1 5PU (“the Property”)

Parties:

Mr Connor Haston, Mr Dylan Leaver, 4 Tarvie Place, Perth, PH1 2LF (“the Applicant”)

Mrs Sharon Nicoll, 13 Bryony, Tillibody, Alloa, Clackmannashire, FK10 2XB (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Elaine Munroe (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that there had been a breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011; and it would make an order for payment of £50.00 in favour of the Applicants.

Background

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 103 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order against the landlord failure to lodge a tenancy deposit.
2. The application contained:- Tenancy agreement; Evidence of date of end of tenancy; and Evidence from Letting Protection Scotland confirming when the deposit was protected.

3. The Respondent lodged written representations together with associated documents prior to the first case management discussion. Two case management discussions had taken place, reference is made to those case management discussion notes. The Respondent's position was that she had not breached the tenancy deposit regulations; she had contacted Letting Protection Scotland to ascertain why the deposit was not protected in January 2021 when the deposit money was placed in a holding account with Letting Protection Scotland. The tribunal issued a Direction to Letting Protection Scotland seeking information in relation to the payment of the tenancy deposit. Letting Protection Scotland had provided written information in relation the process of placing a deposit with them, and what had happened to the deposit lodged by the Respondent.
4. Mrs Leaver appeared as a representative for the Applicants, Dylan Leaver and Connor Haston.

The Hearing

5. The Respondent confirmed that having now had sight of the correspondence from Letting Protection Scotland she accepted that she had breached the regulations and that the deposit had not been paid into the deposit account and had therefore not been secured in accordance with the regulations.
6. She advised however that she had believed in January 2021 that she had complied with the deposit rules, that said she accepted that although she had paid the deposit money to Letting Protection Scotland, she had not completed the whole process and the money had not therefore been transferred to the secure deposit account.
7. She had been a landlord since 2012. She advised that she only had one rental property, and she used a letting agency to ensure that she complied with her landlord responsibilities. She confirmed that when the Applicants took the tenancy, the Applicants paid the letting agents the deposit; and the letting agents paid it to her on 13th January 2021. She advised that she made the payment to Letting Protection Scotland on that date. That she had rented the property out around 6 or 7 times previously, she advised that she had followed the same procedure when paying the deposits for the previous tenancies. There had never been any problems previously and the deposits had been paid into the deposit account. In terms of the deposit

received from the Applicants, she had assumed all the procedures had been properly completed and she had done all that she needed to do.

8. She advised that when a deposit is secured in an approved scheme, Letting Protection Scotland will send an email to the tenants giving them all the information that was required to comply with the regulations.
9. She said it was not until the Applicants texted her regarding the deposit on 31 May 2021, near the end of the tenancy, that she became aware that there was a problem. She was surprised by this, and she sent an email to Letting Protection Scotland about the deposit and to find out what had happened to it. She was advised that it had not been protected. This was the first time that she knew that there was an issue. The deposit was then protected by her. When the tenancy came to an end, the Respondent made a claim on part of the deposit and the claim went through the correct adjudication procedure. The Respondent had considered that matters were concluded but then received notice of this application. She advised that while she accepted that there had been a breach, it was unintentional.
10. There had been an email sent to the Respondent from Letting Protection Scotland in February 2021 advising her that the process had not been completed and the deposit was not secure. She advised that she had overlooked it. It had been missed. She had been busy at that time. It was the covid pandemic. She was home-schooling her two children and caring for her parents. She had also been working from home. It was a difficult time. She said that she had been fully transparent throughout the whole course of these proceedings. Nonetheless she was prepared to take responsibility for where she had gone wrong, but she did not believe that there was anything to show that she had done anything intentionally wrong.
11. She accepted that the top of Page 2 of the Letting Protection Scotland's submission states that automatic allocation of funds was only available where Respondents have instructed Letting Protection Scotland to do so by selecting the online button *direct bank transfer*; she submitted however, that their guidance does not set that requirement out anywhere. She considered that the guidance was poorly drafted. She considered that Letting Protection Scotland had a "get out" clause. She appreciated that it was the Respondent's responsibility and accepted this, however in her opinion

there was nothing in Letting Protection Scotland's submission which clarified that she had done anything wrong.

12. She advised that the deposit was paid into the Letting Protection Scotland scheme within the 30 days period she had just not pressed one button.
13. She thought that she had been a good Respondent. There had been a neighbourly dispute with the tenants; she had been in touch 2/3 times a week with the tenants and other landlord to try and resolve the matter.
14. She was aware of the tenancy deposit regulations, and she thought that she had ensured that the deposit was safely put into a scheme. There had been an adjudication process and the balance had been split and returned to both parties.
15. Mrs Leaver, the Applicants' representative submitted that she believed that the responsibility to ensure that the deposit was securely lodged was the Respondent's responsibility. She submitted that the regulations state this. She advised that Mrs Nicoll confirmed that it was her responsibility to lodge the deposit. She noted that Letting Protection Scotland emailed Mrs Nicoll, however Mrs Nicoll did not open the email and had failed to take any action in relation to it. She did not think that Mrs Nicoll's explanation was credible as she had access to the internet. It was a simple and quick process.
16. Mrs Leaver advised that this was the first flat that her son and his friend had rented. The boys had wanted to be independent and had wanted both parents to be on hand. She advised that the flat was not to a standard that her son had been brought up in. She advised that it was not a home, it had been a place to stay, and there had been issues with neighbours. The Applicants had tried to keep up to date with the tenancy information. Dylan had hardly spent any time at the flat, due to neighbours, the state of the stairs and damp. Dylan found the property through the letting agents, they were very friendly. He paid the rent on time. When it came to moving out. They noticed that they had not had notice of where the deposit was. They tried to find it. She had gone through every Scottish deposit agency to track it down. She advised that this had happened towards the end of the tenancy. The boys then contacted the Respondent via the WhatsApp group they had. They asked the Respondent about where the deposit was, and she replied to say that she was confused; and the boys should know

where it was. Mrs Leaver advised that she had gone onto every site, put in the tenancy details and worked out it was Letting Protection Scotland. She then found out it was not protected until 2 June 2021.

17. Mrs Leaver submitted that the deposit was not secured until 2 June 2021, although she accepted that the money had been held in a holding account with Letting Protection Scotland since 13 January 2021. She submitted however that there was only one email needing actioned, and only one button needed to be pressed.
18. Mrs Nicoll referred to Appendix 4 which showed messages between the parties and was dated 31 May 2021. She advised this was the first communication from the boys. She advised that she responded in 2 hours. She was not sure why they did not contact her in the first instance if they were not sure where the deposit was rather than contact all different deposit schemes.
19. Mrs Leaver advised that this application was not about monetary gain, however she wanted it acknowledged that the money had not been protected.
20. Mrs Nicolls understood that there would be an award against her, however she said that she had set out all information she had, and she had no intention of breaching the regulations. There had been no previous issues with deposits. There had been no loss to the tenants. She submitted that any award against her should be minimal.
21. Mrs Leaver advised that there had been loss in bringing these proceedings, in terms of taking time of work, and the time it had taken to get to the bottom of the financial matters.

Findings in Fact and Law

22. The Tribunal made the following findings in fact:-
 - a. The Respondent was the landlord, and the Applicants were the tenants.
 - b. The Applicant had paid the Respondent a tenancy deposit on 8 January 2021 totalling £550.

- c. That the tenancy commenced on 8 January 2021.
- d. The Respondent had transferred the deposit to Letting Protection Scotland on 13 January 2021. The deposit money remained in a holding account with Letting Protection Scotland. The process to secure the deposit with Letting Protection Scotland had not been completed by the Respondent.
- e. The tenancy deposit was not lodged into an approved scheme account until 2 June 2021.
- f. The tenancy had ended on 2 June 2021.
- g. The tenancy deposit had not been lodged with an approved tenancy deposit scheme within 30 working days of the tenancy commencing.
- h. The tenancy deposit had been repaid to the Applicant.

Reasons for Decision

23. The Tenancy Deposit Schemes (Scotland) Regulations 2011 set out a number of legal requirements in relation to the holding of deposits, and relevant to this case are the following regulations:-

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; ...
- b. ...

24. Regulation 9 provides that a tenant who has paid a tenancy deposit may apply to the first tier tribunal for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.

25. Regulation 10 provides that if satisfied that the landlord did not comply with any duty in regulation 3 then the first tier tribunal — must order the landlord to pay the tenant

an amount not exceeding three times the amount of the tenancy deposit; and may, as it 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.

26. The Respondent accepted that the deposit had not been paid into an approved scheme in accordance with the terms of the regulations. Therefore, the terms of Regulation 10 are engaged, and the tribunal must order that the Respondent pay the Applicant an amount not exceeding three times the amount of their tenancy deposit. The amount to be paid requires to be determined according to the circumstances of the case, the more serious the breach of the regulations the greater the penalty.

27. In this case, we consider that a sum of £50.00 would be appropriate. While there has been a breach of the regulations, we consider that it has been a very minor breach; and any penalty should therefore be at the lower end.

28. In considering what penalty to impose, we have had regard to the verbal and written submissions of both parties.

29. We found the Respondent to be credible and sincere in her explanation, she had also spent time trying to get to the bottom of what had happened to the deposit. The Respondent had arranged for her letting agent to manage the tenancy for her. She appeared to take her responsibilities as a landlord seriously. We note that she had received the deposit money and transferred it a few days later to Letting Protection Scotland. It appeared that the breach was only occasioned due to the fact that the Respondent had omitted to press a button on Letting Protection Scotland's website which would have transferred the money from their holding account to the secure account for that deposit. The Respondent was not aware that the process had not been completed until the tenancy had come to an end. As soon as she was alerted to this matter she finalised the process and the deposit was secured at that time. We found that this had been no more than an inadvertent error on the part of the Respondent.

30. While the deposit was therefore lodged with an approved scheme for the duration of the tenancy, it was not protected. We do note that it was in Letting Protection Scotland's account and not in a personal or business account of the Respondent. We

had regard to the evidence that the Respondent had only one property, and previously complied with ensuring that other tenants deposits had been properly secured. We did not consider that there was any intention to ignore the tenancy deposit regulations, but it was an oversight on the Respondent's part.

31. We note that the Applicant's representative spoke about her son's first tenancy; and it would appear not to have been a positive experience for him; this issue with the tenancy deposit not being properly secured appeared to be another added concern for them. However, the purpose of the regulations considers the failure to secure a deposit and provide information about it; these other issues with the tenancy may have been relevant, if the Respondent had been a negligent or reckless landlord, however, we do not consider that she there was any evidence that she had been. We do not consider therefore that they have much bearing on our determination in this case .
32. We consider that the penalty of £50 recognises that a breach occurred, but it also reflects that it was not deliberate. There appears to have been no intent. As soon as the Respondent was aware of the breach she rectified it. The tribunal considered it was a simple error, the covid pandemic had caused difficulties for many people, there had been a need to try and keep on top of everything, and we considered that honest mistakes do occur. We consider that the pandemic had affected people differently. There did not appear to be a previous history of a failure to lodge tenancy deposits, the Respondent had used the same procedures and therefore was not expecting to see an email from Letting Protection Scotland. We note that on becoming aware of the matter the deposit was secured, and subject to adjudication taking place, the deposit was returned to the Applicants timeously.
33. The Respondent accepted the breach and had not sought to dispute liability.
34. For all of those reasons, we consider that the matter is at the lowest end of the scale and any penalty should be no more than minimal. We do not consider that there has been a blatant or reckless disregard for the regulations. We consider that it is genuine oversight on the part of the Respondent. Accordingly, I consider that a penalty of £50.00 would be appropriate.

Decision

35. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that there had been a breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011; and it would make an order for payment of £50.00 in favour of the Applicants.

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.

Legal Member: Melanie Barbour

Date: 16th December 2021

Melanie Barbour