



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/21/2314

Re: Property at 28 Cleveden Drive, Flat 1/2, Glasgow, G12 0RX (“the Property”)

Parties:

Ms Kristyn Carter, 152 Temple Street, Apartment 312, New Haven, Connecticut, United States (“the Applicant”)

Ms Jane Maharg, 57 beech Ave, Bearsden, Glasgow, G61 3EU (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal 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 £450.00 in favour of the Applicant.

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 included:-

- a. Tenancy agreement;
 - b. Evidence of date of the end of the tenancy; and
 - c. Evidence from Safe Deposits Scotland confirming when the deposit was protected.
3. Both parties appeared at the case management discussion.

The Discussion

4. The applicant advised that she had moved into the property in August 2018. She paid the deposit when moving in. She planned to move out in August 2021. Shortly, after giving notice to the Respondent to end the tenancy, she received a response from the Respondent advising that she had forgotten to lodge the deposit; that she was sorry. She advised her that she was going through a divorce and her husband had not lodged the deposit. She confirmed that it was not her who had raised the question of the deposit, and the respondent who had contacted her a week after giving her notice to advise that she had forgotten to lodge it.
5. The applicant advised that the Respondent had then proceeded to lodge the deposit into an approved scheme.
6. When the Applicant moved out however the Respondent then sought to retain a substantial amount of the deposit for cleaning. The Applicant advised that there was no proof that she had done the things complained of and no proof therefore that the deposit should have been retained. The letting agents were Happy Lets and they did not have any evidence to prove the complaint against the Applicant. Further and in any event, she disputed the cleaning charges and the reasons for seeking to impose them and she did not consider that the Respondent was entitled to seek to try and recover the cleaning charges in terms of the tenancy agreement.

7. She was an overseas student and was not aware of the legal position. She had received advice about tenancy deposits and discovered that deposits were supposed to be lodged with an approved scheme. The applicant was unhappy with the conduct of the respondent in seeking to deduct several hundred pounds from the deposit. The applicant sought advice from the staff at the tenancy deposit scheme and they had given her advice regarding the dispute over the retention of the deposit monies.
8. The respondent advised that in August 2018, at the start of the tenancy, her husband had been dealing with most of their money; she was now a party to acrimonious legal divorce proceedings with her husband. She advised that her husband had misused her money, including removing £50,000 from her account. She advised that she had trusted her husband, and he had abused that trust. He had also had access to her emails, and she had not, therefore, had records of what was happening with various of her financial and property matters. When she discovered that the deposit had not been lodged in an approved scheme she was horrified.
9. She was not disputing that the money had not been deposited into an approved scheme in accordance with the tenancy deposit regulations; and that it was not deposited for three years.
10. She advised that in terms of the deduction to the deposit, she had not been seeking to make any deduction for damages, the deductions were for cleaning. There had been a lot of bags of rubbish left at the flat and a lot of items left in the flat itself. She had been surprised at the amount of belongings which had been left at the flat. She advised that the deposit was £985. In terms of making any deduction to the deposit she had taken advice from the letting agents, Happy Lets about this. They had assessed the cost of removing the rubbish and cleaning the flat. she had taken their advice on this matter. The deductions proposed were to cover cleaning, window cleaning and removing rubbish. The letting agents had all of the receipts for the works which had been done. the letting agents had advised her that this was fair, however the Applicant had not been prepared to agree to these deductions.

11. The respondent advised that she was upset about what had happened with the deposit not being lodged and she apologised for this error.
12. The applicant did not dispute what the respondent submitted in terms of her husband's behaviour, however she pointed out that she was not in a party to what had happened and was not therefore able to know if this information was correct or not, albeit she confirmed that the respondent had been consistent in advising the applicant that there had been difficulties with her husband's conduct. She also considered that she was entitled to assume that as husband and wife, the couple would do things together. She considered that the respondent should have double-checked that the deposit had been paid. The applicant felt she was taken advantage of by the respondent. She had the right to expect that matters would be handled correctly by her landlord; however, the deposit had not been lodged and when her tenancy had come to an end the respondent had proposed to take a lot of it. She considered that regardless of whatever was happening in the landlord's personal life she had a right to expect that her money was handled correctly. She was sorry that the respondent was going through a difficult time, but she had trusted the respondent with her money.
13. She advised that the neighbours had told her that they would remove a lot of the rubbish for her, as she had been unable to get to the municipal dump with the rubbish. She did not consider that she was responsible for deep cleaning fees and considered at the end of a tenancy such cleaning costs were the responsibility of the landlord.
14. The respondent advised that she had been a landlord for around 15-20 years. She advised that this was the first time that this had ever happened to her. She had only one property. She confirmed that she was aware of the duty to lodge a deposit into an approved scheme. She would always find a tenant through a letting agent. Previously her letting agent had lodged the deposit for her. On this occasion her husband said it was something that he could do, this was the first time a deposit had not been lodged.

15. She advised that the deposit had been paid back to the applicant. She advised that she had put the deposit into a scheme as soon as she had known it had not been lodged. The respondent advised that she had contacted Safe Deposit Scotland when the applicant had given her notice that she was leaving. This was when she discovered that the deposit had not been paid into the deposit scheme.

16. She accepted that she had been naïve and should have been on top of things and had not been. She advised that her husband had been hiding emails. She had thought that her husband had taken care of it. She advised that she had just gotten married in 2017, and there had been a family illness. This was her first marriage, at 53 years old. She had trusted him. He had told her that he would manage everything.

17. The applicant advised that her main concern was that the money was mishandled. She had been taken advantage of.

Findings in Fact and Law

18. The Tribunal made the following findings in fact:-

- a. The Respondent was the landlord, and the Applicant was the tenant.
- b. The tenancy commenced on 8 August 2018. It was a private residential tenancy.
- c. The applicant paid a deposit of £985 to the respondent. It had been paid on around 8 August 2018.
- d. The applicant had believed that her husband had transferred the deposit into an approved tenancy deposit scheme.
- e. The deposit was not placed into an approved tenancy deposit scheme until 26 August 2021.
- f. The tenancy ended on 31 August 2018.

- g. The application to the tribunal under rule 103 had been made on 23 September 2021.
- h. The respondent accepted that the money had not been deposited into an approved deposit scheme in accordance with the statutory regulations.

19. Reasons for Decision

20. 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:-

Duties in relation to tenancy deposits

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.

Sanctions

9.— (1) A tenant who has paid a tenancy deposit may apply to the [First-tier Tribunal] 1 for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit. (2) An application under paragraph (1) must be made [...]2 no later than 3 months after the tenancy has ended.

If satisfied that the landlord did not comply with any duty in regulation 3 the [First-tier Tribunal] 1 — (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 [First-tier Tribunal] 1 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.

21. 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.

22. In this case, I consider that a sum of £450 would be appropriate.

23. In considering what penalty to impose, I have had regard to the verbal and written submissions of both parties. I found both parties to be credible and reliable. This was a discussion and not a hearing on evidence and I consider that the parties agreed on a lot of matters, for the purposes of this application there were sufficient matters which the parties agreed about, and accordingly I considered that I am able to determine the matter.

24. At the outset the respondent was honest and admitted the breach, that the deposit had not been lodged in accordance with the regulations. The respondent stated that she accepted that she had been naïve in trusting her husband to put the deposit into an approved scheme. While I found the respondent to be honest in her explanation as to what had happened, she was nonetheless the landlord, and it was therefore her responsibility to ensure that the deposit was placed in an approved scheme. The deposit had been unsecured for 3 years. I consider that the applicant was entitled to be concerned about what had happened to her deposit during that period.

25. She advised that she had been a landlord for 15-20 years. She was aware of the regulations. Given this, it is also clear that the respondent was aware of her responsibility to ensure the safety of someone else's money; but she failed to do so. The applicant was an overseas student, and the size of the deposit was not an insubstantial amount. The applicant advised that she had felt vulnerable on discovering that the deposit had not been lodged; she considered she was entitled to expect that her deposit was safe. The purpose of the

regulations is to ensure that tenants can be confident that their deposit monies were safe and could only be used in a manner agreed by the parties; and this had not been the case here. I consider that these factors taken together lead me to conclude that the failure is not insignificant particularly, as the breach was for the majority of the duration of the tenancy.

26. That said, in mitigation for the respondent, I did believe that she had trusted her husband, and it had been her naivety rather than any disregard for the regulations that had led to the breach occurring. As she advised it was a very new marriage, and in my opinion, it was unreasonable for her to say that she believed that her husband would have acted honestly in this matter.

27. I also considered it relevant that the deposit was placed in an approved scheme before the tenancy came to an end; and further that it had been the respondent who had found out the deposit had not been lodged, had quickly contacted the applicant to advise her of this fact and then arranged to have it lodged, these actions give credibility to her position; they also lend credibility to her assertion that she did take the regulations seriously. She was honest in admitting the failure to the applicant and she appears to have rectified it quickly once she became aware of it.

28. I consider that if the respondent had not considered the regulations to be of some importance she would not have placed the monies into the scheme.

29. Further had she wished to retain the deposit monies, she could simply have not placed the monies into a scheme, particularly as she had been notified that the tenancy was coming to an end. The fact that she placed the money into an approved scheme and thereafter sought to make a claim through the approved scheme for costs she considered she was entitled to, was not in my opinion a factor against the respondent. The tenancy deposit regulations are there to allow for independent adjudication in the event of the parties being in dispute and in my opinion, her actions in ensuring that the money was in a scheme before she sought to deduct any of it, is another factor in mitigation for the respondent.

30. Weighing up the various factors I consider that I have to impose a penalty which recognises that the deposit was not secured for 3 years; the respondent was aware of her duties; and had let properties for at least 15 years. However, I also require to take into account the mitigating factors set out above and having done so, I consider that a penalty of around one half of one month's rent, namely £450.00 would be appropriate in this case.

Decision

31. 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 £450.00 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.

M. B

Legal Member/Chair

05 May 2022
Date