



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/21/3228

**Re: Property at 2/1 Comely Bank Row Edinburgh EH4 1DY (“the Property”)
Parties:**

Mr Pedro Moleirinho, Ms Laura Cekuolyte, 4 Drum Brae Grove, Edinburgh, EH4 7RZ (“the Applicants”)

Mrs Ruth Ball, 18 Comely Bank Avenue, Edinburgh, EH4 1EL (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member)

1. Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) being satisfied that the Respondent as landlord of the property at 2/1 Comely Bank Row Edinburgh EH4 1DY (“the Property”) did not comply with a duty in Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011, makes an order for the Respondent to pay to the Applicants the sum of one thousand seven hundred pounds (£1700).

2. 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 made by Mr Pedro Moleirinho and Ms Laura Cekuolyte on 29 December 2021. There was a second application before the tribunal in terms of rule 111 seeking the return of the deposit. The applicants attended the CMD. The respondent did not attend but was represented by Mr Angus Knox of Ask Financial Management Services.

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

- (1) Application dated 29 December 2021.
- (2) Private Residential Tenancy Agreement ('PRT') dated 2 March 2021.
- (3) Extract from the Scottish Landlord Register.
- (4) Text messages dated 6 October 2021.
- (5) Bank statements.
- (6) Email from respondent's representative dated 14 March 2021
- (7) Email from applicant to Respondent's representative dated 24 November 2021,
- (8) Correspondence from the tenancy deposit companies. regarding email dated 5 August 2021.
- (9) Email from the respondent's representative to the tribunal dated 24 February 2022.

Case management discussion

Matters agreed

4. It was agreed that the parties entered into a PRT on 2 March 2021 for let of the property. The applicants took entry on 5 March 2021. They paid a deposit of £1000 directly to the respondent on 2 March 2021 but it was agreed on 14 March 2021 that the sum of £150 would be deducted from the deposit for cleaning when the applicants left the property as they had a pet dog. The deposit due to be lodged was £850. It was agreed that the deposit had not been lodged and had not been returned.

The applicants' position

5. The applicants dealt directly with the respondent when they viewed the property. They attended at Mr Knox's office to sign the lease. They did not receive any check in report and the property was clean when they took entry. The respondent agreed that they could have a dog in the property and the sum of £150 would be retained to cover any extra cleaning when they left. The respondent attended at the property unannounced on 5 October 2021 when they were due to move out. They were in the process of cleaning the property and she agreed that they could hand in the keys to Mr Knox on 6 October 2021. The respondent did not inspect the property and there was no check out report. They asked for their deposit back on 6 November 2021. On 11 November 2021 they received an email from Mr Knox with a set of photos which stated there were a 'list of items that they had to attend to'. They have not had the deposit returned. They dispute that this is the first time the respondent has taken a deposit and they understand from neighbours that the respondent has

previously rented the property to tenants and failed to return the deposit, but they have no evidence today in support of that.

The respondent's position

6. The respondent is not an experienced landlord and she only rents out the one property. She previously rented the property as an Airbnb and this is the first time to Mr Knox's knowledge that she has taken a deposit. The respondent accepts that she failed to lodge the deposit or comply with any of the obligations in regulation 42 of the regulations, save advising the applicants of her landlord registration details. Mr Knox submitted that this was a genuine oversight on the part of the respondent as she had other work commitments. The respondent accepts that she has also retained the deposit and this is due to her contention that the property was left in a dirty condition and the £150 was insufficient to cover the cost of cleaning. Mr Knox submitted that he suffered a bereavement around the time of the end of the tenancy and as a result matters have taken longer to resolve than they otherwise might.

7. Findings in fact

- The respondent is the owner of the property.
- The applicant rented the property from the respondent from 5 March 2021 until 6 October 2021.
- The applicants paid a deposit of £1000.
- The parties agreed that the sum of £150 would be deducted from the deposit and used for cleaning on the applicants' departure.
- The parties agreed that the sum of £850 would be placed in a deposit scheme.
- The deposit was not lodged into an approved scheme within 30 working days of 2 March 2021.
- The deposit was unprotected for the duration of the tenancy and has been retained by the respondent.

Reasons

8. This was a clear breach of the regulations and the only matter in dispute was the gravity of the breach. The applicants disputed that this was the first time that the respondent had taken a deposit, but they wanted the tribunal to make a decision today and did not want to fix a hearing so that evidence could be led regarding any previous deposits taken. The tribunal was satisfied that it had sufficient information before it to make a decision and the procedure had been fair.

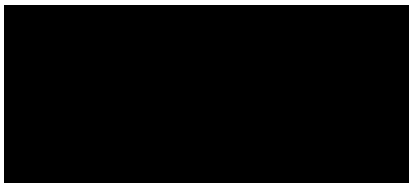
9. The tribunal reviewed all of the recent cases regarding tenancy deposit schemes and noted that in the case of Kirk-v-Singh 2015 SLT (Sh Ct) 111 sheriff Jamieson was mindful of the need to:-

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

10. The tribunal decided that this was a fairly serious breach of the regulations as the deposit had not been lodged for the duration of the 7 months of the tenancy and the deposit has been retained by the respondent due to what she sees as issues with the cleanliness of the property. This is exactly the type of situation that the regulations are designed to avoid. The tribunal took into account that the respondent is a relatively inexperienced landlord. She is however a registered landlord and should be aware of her obligations regarding tenancy deposits. She has retained the sum of £850 for several months and the applicants have been obliged to make a separate application for the return of the deposit. The tribunal decided that a penalty of £1700 was 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.



Legal Member

17.03.2022

Date