



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for payment where a landlord has not paid the deposit into an approved scheme in terms of Rule 103 of the Procedure Rules.

Chamber Ref: FTS/HPC/PR/22/0031

Re: 29 Summerhill Road, Aberdeen, AB15 6HJ ("the Property")

Parties:

Ms A Russell ("the Applicant")

Mr Shah Nawaz and Mrs Iqra Ahmed residing at Glenwood, Den of Cults, Aberdeen, AB15 9SJ ("the Respondent")

Tribunal Member: Jacqui Taylor (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent should pay the Applicants the sum of £2500 by way of sanction under Regulation 10 1(a) of the Tenancy Deposit Schemes (Scotland) Regulations 2011, as amended by the Housing (Scotland) Act 2014 (Consequential Provisions) Order 2017.

1. Background

The Applicant submitted an application to the Tribunal for payment where a landlord has not paid the deposit into an approved scheme in terms of Rule 103 of the Procedure Rules, which application was dated 10th February 2022.

2. Documents lodged with the Tribunal with the Application

Documents lodged with the Tribunal by the Applicant were:

- 2.1 A copy of the Private Residential Tenancy Agreement between the parties dated 5th June 2020.
- 2.2 A screenshot of the safety deposit scheme entry (showing the date of transfer of the deposit) of 17th December 2021.

2.3A screenshot of a text confirming the end date of the tenancy of 10th December 2021.

3. Notice of Acceptance.

By Notice of Acceptance by Josephine Bonnar, Convener of the Tribunal, dated 21st February 2022, she intimated that she had decided to refer the application (which application paperwork comprised documents received between 3rd January 2022 and 16 February 2022) to a Tribunal.

4. The Case Management Discussion.

This case called for a Case Management Discussion (CMD) Conference call at 10.00 on 24th August 2022.

The Applicant and the Respondents attended.

4.1 Preliminary Matter

The Tribunal clarified that the CMD was only concerned with the question as to whether the deposit had been lodged with the tenancy deposit scheme timeously and if the deposit had been lodged late the penalty payable by the Respondents. The Tribunal also clarified that they are not considering the dispute between the parties as to the condition of the Property at the end of the tenancy. The parties would have to make a separate application to the Tribunal in relation to the dispute.

4.2 The Tribunal identified with the Applicant and the Respondent the following agreed facts, which were accepted by the Tribunal:

4.2.1 The Applicant, was Tenant of the Property 29 Summerhill Road, Aberdeen, AB15 6HJ and the Respondents were Landlords of the Property in terms of the lease between them dated 5th June 2020.

4.1.1 The lease was a Private Residential Tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016.

4.2.2 Craig Alexander Kenny is the husband of the Applicant and he was a joint tenant of the Property.

4.2.3 The start date of the tenancy was 1st July 2020.

4.2.4 The Applicant vacated the Property on 10th December 2021.

4.2.5 The Applicant paid the deposit of £1250 to the Landlords on a date between one month and two weeks prior to the commencement of the tenancy.

4.2.6 The deposit continued to be held by the Landlords under the Private Residential Tenancy.

4.2.7 The Landlords paid the deposit to the tenancy deposit scheme on 13th December 2021 and Safe Deposit Scotland received the deposit on 17th December 2021, after the Applicant had removed from the Property.

4.3 Oral Representations made by the Applicant

4.3.1 She explained that she had stayed in the Property for eighteen months with her husband who was a joint tenant.

4.3.2 They started to have issues with the Landlords after they vacated the Property as the Landlords wanted to make deductions from the deposit which they did not consider were justified.

4.3.3 The Landlords did not lodge the deposit with a tenancy deposit scheme during the period of the tenancy. They retained control of the deposit.

4.3.4 It was not the responsibility of the Tenants to advise the Landlords to lodge the deposit with the tenancy deposit scheme.

4.3.5 She considered that the maximum penalty would be appropriate in the circumstances.

4.4 Oral Representations by The Respondents.

4.4.1 Mr Ahmed explained that he had been unaware of the regulations which required tenancy deposit to be lodged into a deposit protection scheme.

4.4.2 They are not professional landlords. The Property 29 Summerhill Road, Aberdeen is the only property they lease.

4.4.3 They thought the requirement was to lodge the deposit with the tenancy deposit scheme as soon as there was a dispute, which is what they did.

4.4.4 They had intimated to the tenants that they considered that the Property had not been returned in the correct condition at the end of the lease and they advised the tenants of the sums that were due by them. The tenants disagreed and consequently Mr and Mrs Ahmed had paid the deposit to Safe Deposits Scotland.

4.4.5 He acknowledged that the deposit had been paid to Safe Deposits Scotland after the end of the tenancy.

4.4.6 They have since leased the Property to new tenants and they have lodged the deposit with the tenancy deposit scheme correctly this time.

4.4.7 He acknowledged that clause 10 of the tenancy agreement states that the Landlord must lodge any deposit received with a tenancy deposit scheme within 30 days of the start of the tenancy. He explained that they had missed this requirement. They hadn't properly read the lease.

4.4.8 They had made a genuine mistake by not lodging the deposit with the tenancy deposit scheme correctly.

4.4.9 They did not make any deductions from the deposit, even although they considered them to be due. They remitted the deposit to the correct scheme as soon as they were aware that they could not reach agreement with the tenants.

4.5 Written representation from the Applicant

The Applicant had sent the Tribunal written representations and photographs concerning the condition of the Property at the end of the tenancy.

4.6 Written representations from the Respondents.

4.6.1 The Respondents had provided a timeline and photographs regarding the dispute with the Applicant concerning the condition of the Property at the end of the tenancy.

4.6.2 The photographs included a screenshot from Safe Deposits Scotland, in the following terms:

'Deposit Account Number:DAN681907

On 20th December 2021 we sent the tenant a copy of your Proposal for Deposit Repayment relating to this tenancy.

We advised the tenant that they had until 7th February 2022 to respond to your Proposal for Deposit Repayment, if they wished to either:

- *Specifically agree to your Proposal for Deposit Repayment; or*
- *Dispute your Proposal for Deposit Repayment, in which case they needed to specify the amount of the deposit which they considered should be repaid to them, if different to the amount claimed by you.*

The tenant has advised us that they wish the dispute to be dealt with by the First tier Tribunal.

Where a tenant tells Safe Deposits that they wish to go to court instead of using adjudication, the deposit will be released as per the Proposal for Deposit Repayment made by the landlord. The deposit will be released by 14th February 2022. Safe Deposits has no further role to play and it will be for the First tier Tribunal to decide how the deposit should be allocated.'

5. Decision.

5.1 The relevant sections of the Tenancy Deposit (Scotland) Regulations 2011 ('2011 Regulations'), as amended, provide:

Regulation 3.

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.

Regulation 10

10(1) If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal—

(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit;

5.2 In assessing the level of sanction the Tribunal considered the parties' representations.

5.3 The Tribunal considered the following cases:-

5.3.1 Kirk v Singh 2015 SLT Sh Ct 111

In this case the Sheriff considered the whole circumstances and decided that whilst the defender's default could be characterised as serious it was not at the most serious end of the scale and it is also necessary to have regard to the mitigating circumstances advanced by the defender. Accordingly, in his opinion, the fair, proportionate and just sanction in that case, having regard to the maximum sanction available, was £500. The deposit in that case was £380.

5.3.2 Cooper v Marriot 2016 SLT (Sh Ct) 99

In this case the respondent was ordered to pay the applicant double the deposit, less £50 representing the estimated damage to a table, by way of sanction for flagrant and wilful disregard of the terms and purpose of the regulations. It was held that landlords who were in such blatant breach could never mitigate their own conduct and failing by reference to the character or conduct of the tenant, and even if it could be considered relevant to the assessment of the sanction, there was no conclusive basis upon which the allegations made could be held to be substantiated. The respondent had to have known of the tenancy deposit scheme where it was mentioned in the tenancy agreement, even though ignorance was not an excuse, and the fact remained that the deposit was held by the respondent, unprotected by the regulations, for two years, as a result of which the applicant had been deprived of his right to invoke the dispute resolution service provided under Pt 6 of the regulations to settle issues about dilapidations at the end of the tenancy; further, the regulations did not recognise the status of amateur landlord but were applicable to all landlords regardless of the scale in which they operated.

5.4 The Tribunal acknowledged that the 2011 Regulations were intended to put a landlord and a tenant on equal footing with regard to any tenancy deposit and to provide a mechanism for resolving any dispute between them with regard to the return of the deposit at the termination of a tenancy.

5.5 The Tribunal in assessing the sanction level has to impose a fair, proportionate and just sanction in the circumstances, always having regard to the purpose of the 2011 Regulations and the gravity of the breach.

5.6 The Regulations do not distinguish between a professional and non-professional landlord. The obligation is absolute on the landlord to pay the deposit into an Approved Scheme

5.7 The Tribunal acknowledges that the Respondents advised that they were unaware of the regulations at the time the Private Residential Tenancy was signed. They had not properly read the lease. However, ignorance of the law is no excuse.

5.8 The Tribunal were concerned that the deposit had been unprotected for the duration of the tenancy and that the deposit was only paid into the scheme after the termination date.

5.9 Despite the Tribunal being satisfied that the Respondent had failed to comply with their duties under Regulations 3 (1) of the 2011 Regulations, the purpose of the 2011 Regulations had not been defeated. The deposit was paid into the approved scheme at the termination of the tenancy when the parties were unable to reach agreement on the deductions to be made from the deposit. The Applicant chose not to use the Rent Deposit adjudication scheme with the result that the Scheme returned the deposit to the Respondents.

5.10 In the circumstances the Tribunal considers it to be fair, proportionate and just to sanction the Respondents for non compliance by awarding the Applicant a sum of £2500 being the equivalent of two times the deposit of £1250.

5.11 The Tribunal orders the Respondents to pay the Applicant the sum of £2500 by way of sanction under Regulation 10 1(a) of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

5.12 The Tribunal acknowledged that the lease states at section 2 that joint tenants are jointly and severally liable to the landlords for obligations under the lease. This obligation includes payment of the deposit. Consequently, either tenant could raise an application to the Tribunal under Tribunal Rule 103. It is a matter for the joint tenants to agree privately whether they will repay any award made to the other and they may have a personal claim against the other if that payment is not made.

6. 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.

Jacqui Taylor

24th August 2022

Legal Member/Chair

Date